

Saginaw Chippewa Tribal Law

TITLE II

Children's Code

As amended August 28, 2019

CHILDREN’S CODE

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TITLE II
SAGINAW CHIPPEWA CHILDREN'S CODE

CHAPTER 2.1

THE PURPOSE OF THE CODE

- 2.101 The young people are the most important resource of the Saginaw Chippewa Tribe and their welfare is of paramount importance.
- 2.102 It is important that the young people of the Saginaw Chippewa Tribe receive, preferably in their own homes, the care and guidance needed to prepare them to take their places as adult members of the Saginaw Chippewa Tribe.
- 2.103 This Court shall protect the child's interest by choosing a course of action which least restricts the child's freedom and is consistent with the safety and interests of the Saginaw Chippewa Tribe.
- 2.104 The Saginaw Chippewa Tribe needs a recognized children's court system to insure that off-reservation courts will be willing to return young people of the tribe to the reservation for care and guidance.

CHAPTER 2.2

DEFINITIONS

For the purpose of this code, the words and phrases shall have the meanings respectively ascribed to them.

- 2.201 "Abandon" when a parent leaves a child without communication or fails to support a child and there is no indication of the parent(s) willingness to assume the parental role(s) for a period exceeding six (6) months.
- 2.202 "Abuse "or "child abuse or neglect" means an act or omission in one of the following categories, which seriously threatens the health or welfare of a child:
- (a) Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or death, and such condition or death is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or death, or circumstances indicate that such condition or death may not be the product of an accidental occurrence;
 - (b) Any case in which a child is subjected to sexual assault or molestation;
 - (c) Any case in which the child's parents, legal guardians, or custodians fail to

take the same actions to provide adequate food, clothing, shelter, or supervision that a prudent parent would take.

- 2.203 "Adjudicatory Hearing" means a hearing to determine whether the allegations of a petition under Chapter 2.7 are supported by clear and convincing evidence.
- 2.204 "Adult" means a person eighteen (18) years of age or over or otherwise emancipated by order of a court of competent jurisdiction; except that any person eighteen (18) years of age or over under the continuing jurisdiction of the Court, or who is involved in proceedings in the Court which were commenced prior to his eighteenth birthday, or concerning whom a petition has been filed for his adoption under this Code, shall be referred to as a child or minor.
- 2.205 "Child" means:
- (a) a person under eighteen (18) years of age, and who has not been emancipated by order of a court of competent jurisdiction;
 - (b) a person eighteen (18) years of age or older concerning whom proceedings are commenced in Children's Court prior to his eighteenth (18th) birthday; or
 - (c) a person eighteen (18) years of age or older who is under the continuing jurisdiction of the Children's Court.
- 2.206 "Child care center" means a facility licensed and approved pursuant to law. If such facility is located outside the tribal jurisdiction, it shall be licensed or approved as required by law in that jurisdiction.
- 2.207 "Child placement agency" means an agency licensed or approved pursuant to law. If such agency is located outside the tribal jurisdiction, it shall be licensed or approved as required by law in that jurisdiction.
- 2.208 "Children's Court" or "Court" the Saginaw Chippewa Tribal Court when exercising jurisdiction under this Code.
- 2.209 "Children's Court Judge" any duly appointed judge of the Saginaw Chippewa Tribal Court when exercising jurisdiction under this Code.
- 2.210 "Commit" means to transfer legal custody.
- 2.211 "Custodian" one who has physical custody of a minor and who is providing food, shelter, and supervision to him.
- 2.212 "Deprivation of custody" means transfer of legal custody by the Court from a parent or a previous legal custodian to another person, agency or institution.

- 2.213 "Detention" means the temporary care of a child who requires secure custody in physically restricting facilities pending Court disposition or an execution of a Court order for placement or commitment.
- 2.214 "Dispositional hearing" means a hearing to determine what order of disposition should be made concerning a child adjudicated as a minor in need of care. Such hearing may be part of the proceeding which include the adjudicatory hearing or it may be held at a time subsequent to the adjudicatory hearing.
- 2.215 "Foster care home" means a facility licensed and approved pursuant to 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.
- 2.216 "Guardian Ad Litem" is a special Guardian appointed by the Court to prosecute or defend, in behalf of an child.
- 2.217 "Guardianship of the person" a person other than the child's parent who is vested by the court to make major decisions affecting a child.
- 2.218 "Halfway Houses" means group care facilities for children who have been placed on probation or parole under the terms of this Code.
- 2.219 "Least Restrictive Alternative" this dispositional concept, when used in this Code, directs the Court to select the least drastic method of achieving its goal; the restrictions placed on the child must be reasonably related to the Court's objectives and must be the least restrictive way of achieving that objective. The "Least Restrictive Alternative Theory" applies to all actions taken by the Children's Court under this Code. Whenever the Court must decide how to proceed, it should consider the reason for the action and select the solution that fulfills the objective consistent with the underlying rationale in a way that goes no further.
- 2.220 "Legal custody" means the right to the care, custody, and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for a child and, in an emergency, to authorize surgery or other extraordinary care. Legal custody may be taken from a parent only by court action.
- 2.221 "Minor" means the same as a Child under this section.
- 2.222 "Minor-In-Need-of-Care" or " Child-In-Need-of-Care" a Minor:
- (a) who has no parent, guardian or custodian available and willing to care for him/her or who is homeless, without proper care, or not domiciled with his parent, guardian, or legal custodian, and through no fault of his parent, guardian or legal custodian; or

- (b) who has suffered or is likely to suffer a physical injury, inflicted upon him/her by other than accidental means, which causes or creates a risk of death, disfigurement, or impairment of bodily functions; or
- (c) who has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his parent, guardian or custodian necessary for his/her health and well-being. The fact that one of the parents, guardian or custodian is providing adequate food, clothing, shelter, medical care, education or supervision necessary for the health and well-being of the minor, does not excuse the neglect of the offending parent, guardian or custodian; or
- (d) who has been sexually abused or sexually exploited by a parent, guardian or custodian either intentionally or negligently; or
- (e) whose parents, guardian or custodian had the opportunity to prevent physical injury or physical or sexual abuse, and failed to do so; or
- (f) who has been emotionally and/or psychologically abused or neglected;
- (g) who is born addicted to alcohol or exposed to controlled substance, which has resulted in physical and/or mental harm to the child; or
- (h) whose parents are separated and no court of competent jurisdiction has issued a temporary custody and support order; or
- (i) whose parent has been convicted of a violent or criminal sexual crime against the other parent or a sibling of a child; or
- (j) whose parent has been convicted of a crime of a nature that demonstrates the parent's unfitness to adequately parent the child; or
- (k) whose parent has had his/her parental rights to one or more siblings of the minor terminated due to serious and chronic neglect or physical or sexual abuse; or
- (l) whose found under conditions that would support grounds for termination of parental rights found in Chapter 2.9.

2.223 "Parent" means either a natural parent or a child by adoption.

2.224 "Paternity" means the biological relationship of a man to his child.

2.225 "Protective supervision" means a legal status created by court order under which the child is permitted to remain in his home or is placed with a relative or other suitable person, and supervision and assistance is provided by the Court, the

Tribal Family Services or other agency designated by the Court.

- 2.226 "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after legal custody, guardianship of the person, or both have been vested in another person, agency, or institution, including, but not necessarily limited to, the responsibility for support, the right to consent to adoption, the right to reasonable visitation unless restricted by the court, and the right to determine the child's religious affiliation.
- 2.227 "Respondent" a minor in an adoption proceeding; a parent or custodian in a minor-in-need-of-care termination proceeding.
- 2.228 "Shelter" means the temporary care of a child in physically unrestricting facilities pending Court disposition or execution of a Court order for placement.
- 2.229 Termination of the parent-child legal relationship" means the permanent elimination by court order of all parental rights and duties, including residual parental rights and responsibilities.
- 2.230 "Transfer proceeding" means any proceeding in the tribal court to accept or decline transfer from any state court of any state court proceeding for the foster care placement of, or termination of parental rights to, any Indian child.
- 2.231 " Controlled Substance" any substance defined or described as such in the Uniform Controlled Substances Act, 21 U.S.C. §812, as amended.
- 2.232 " Tribal Department" or " Tribal Family Services" means the Anishinaabeg Child and Family Services Department of the Saginaw Chippewa Indian Tribe that provides child, family and human services to the members and residents of the Saginaw Chippewa Indian Tribe of Michigan.

CHAPTER 2.3

PROCEDURAL RIGHTS; NOTICE REQUIREMENTS

The notice and procedural rights listed in Sections 2.310 - 2.313 shall be afforded to parties in each of the following proceedings:

- 2.301 Minor-In-Need-of-Care Proceedings
- 2.302 Preliminary Inquiry (Pursuant to Chapter 2.7)
- 2.303 Informal Hearing (Pursuant to Chapter 2.7)
- 2.304 Adjudicatory Hearing (Pursuant to Chapter 2.7)

- 2.305 Dispositional Hearing (Pursuant to Chapter 2.7)
- 2.306 Modification of Dispositional Order (Pursuant to Chapter 2.7)
- 2.307 Termination (Pursuant to Chapter 2.9)
- 2.308 Termination Hearing (Pursuant to Chapter 2.9)
- 2.309 Adoption Hearing (Pursuant to Chapter 2.11)
- 2.310 Notice
- (a) Notice of any proceeding shall be given to the minor and his parent, guardian, guardian ad litem or custodian and their counsel, if any, as soon as the time for the proceeding has been established and no later than forty-eight (48) hours before the hearing.
 - (b) If the proceeding is an Adjudicatory Hearing (Minor-In-Need-of-Care) or a Termination Hearing, notice shall be by Summons as set forth in Section 2.311.
- 2.311 Summons
- (a) At least five (5) days prior to the Adjudicatory or Termination hearing, the Children's Court shall issue summons to:
 - (1) The minor; and
 - (2) The minor's parent, guardian, guardian ad litem, or custodian; and
 - (3) Any person the Children's Court believes necessary for the proper adjudication of the hearing; and
 - (4) Any person the minor believes necessary for the proper adjudication of the hearing.
 - (b) The summons shall contain the name of the court, the title of the proceedings, and the date, time, and place of the hearing.
 - (c) A copy of the petition shall be attached to the summons.
 - (d) The summons shall be delivered personally by a tribal law enforcement officer or appointee of the Children's Court. If the summons cannot be delivered personally, the Court may deliver the summons by registered mail. If the summons cannot be delivered personally or by registered mail, the summons may be delivered by publication in a newspaper of daily circulation in the County of Respondent's residence for three (3) days prior to the hearing and by posting at the tribal Court.
 - (e) If a person who has been issued a summons fails to appear at the hearing,

that person shall be held in contempt of court.

2.312 The Notice Shall Contain:

- (a) The name of the court; and
- (b) The title of the proceedings; and
- (c) A brief statement of the substance of the allegations against the minor or the parent; and
- (d) The date, time, and place of the proceeding; and
- (e) A statement of the right to counsel as set forth in section 2.313(a).

The notice shall be delivered by tribal law enforcement officer, or an appointee of the Children's Court. Off-reservation notice may be provided through other law enforcement agencies or certified mail.

2.313 Rights of Parties

- (a) Right to Counsel
 - (1) The Children's Court judge shall inform the minor and his parents, guardian, guardian ad litem, or custodian of their right to retain counsel by telling them "according to the Indian Civil Rights Act, you have a right to have a lawyer or other person represent you at this hearing. However, you or your family must pay any fees for such representation."
 - (2) If the parties appear at the hearing without counsel, the Children's Court judge shall continue the proceedings if they need additional time to seek counsel.
 - (3) If the parties are unable to pay for counsel, the Children's Court judge shall inform them to any available services that provide representation.
- (b) The minor need not be a witness against, nor otherwise incriminate, himself.
- (c) A parent may not be compelled to give testimony against himself.
- (d) The Children's Court shall give the minor, his counsel or person he has selected to represent him, and the minor's parent, guardian, guardian ad litem, or custodian and his counsel or person he has selected to represent him, the opportunity to introduce evidence to be heard on their own behalf and to examine all witnesses.

- (e) The minor or the minor's parents shall have the right to call witnesses in their behalf.

2.314 Background Investigation for ACFS Employees and Child Welfare Committee Members.

- (a) A background investigation will be conducted by the Tribe for any person prior to employment as a social worker, supervisor or director or any other employee at the Tribe's ACFS Department or for any person prior to their appointment to the Tribe's Child Welfare Committee. An additional background investigation shall be conducted on a yearly basis for any person employed at ACFS as a social worker, supervisor or director and for any person serving on the Child Welfare Committee.
- (b) A positive determination made as a result of a background investigation of any one or more of the following criteria for such background investigation under this Section 2.314 shall disqualify any person from the position of ACFS social worker, supervisor or director or as a member of the Child Welfare Committee unless otherwise provided;
 - (1) found guilty of, or entered a plea of nolo contendere or guilty to, any felony in any jurisdiction: or
 - (2) found guilty of, or entered a plea of nolo contendere or guilty to any crime involving sexual assault, molestation, exploitation, prostitution; crimes against persons; or any offense committed against children; or
 - (3) has been the subject of any final adjudication by any court of competent jurisdiction involving child abuse or neglect; or
 - (4) any applicant for a position of social worker, supervisor or director with the ACFS Department and any person considered for an appointment to the Child Welfare Committee who is under investigation or in a current criminal proceeding for any crime involving a child or in current adjudication for abuse or neglect of a child.
- (c) An additional background investigation may be conducted on an employee or a member of the Child Welfare Committee more often than once per year in the event that the Tribe becomes aware of a potential event or occurrence that may disqualify that employee or Child Welfare Committee member under this Section.
- (d) The Tribe will notify any person of the requirement for a background investigation prior to employment or appointment and will provide written notice to any person subject to a background investigation in advance of an any investigation conducted under this Section.

- (e) The cost for a pre-employment investigation conducted under this Section 2.314 shall be borne by the applicant for said position at ACFS provided that the Tribe shall inform the applicant of the amount of the cost of such background investigation in advance.
- (f) The costs for all background investigations conducted under this Section for persons employed as ACFS social workers, supervisors or director shall be borne by the Tribe. The costs for all background investigations for Child Welfare Committee members or candidates for appointment to such Committee shall be borne by the Tribe.
- (g) Background investigations shall be conducted no later than August 20, 2014 as provided under this Section for any ACFS social worker, supervisor or director and any Child Welfare Committee member who has been employed for one year or greater as of June 4, 2014 and an additional background investigation shall be conducted one year thereafter for such employees.

CHAPTER 2.4

THE COURT SYSTEM

2.401 Establishment. There is hereby established for the Saginaw Chippewa Indian Tribe, a division of the community court to be known as the Saginaw Chippewa Children's Court, which shall have the jurisdiction set forth in Chapter 2.5 of this Code.

The Saginaw Chippewa Children's Court shall consist of one chief-judge and one associate-judge appointed by the tribal council and serving at its pleasure.

2.402 Purpose. The purposes of this Court are:

- (a) To secure for each child subject to these provisions such care and guidance, preferably in his own home, as will best serve his welfare and the interests of his tribe and society in general;
- (b) To preserve and strengthen family ties whenever possible, including improvement of home and environment;
- (c) To protect and preserve the tribal heritage and cultural identity of the child;
- (d) To remove a child from the custody of his parents only when his welfare and safety or the protection of the public would otherwise be endangered; and

- (e) To secure for any child removed from the custody of his parents the necessary care, and guidance to assist him in becoming a responsible and productive member of his tribe and society in general.
- (f) To carry out these purposes, the provisions of this Code shall be liberally construed.

2.403 Authority of Court. The Children's Court is authorized to cooperate fully with any Federal, State, Tribal, public or private agency or court to participate in any diversion, rehabilitation or training programs and to receive grants-in-aid to carry out the purposes of this code.

The Children's Court shall utilize such social services as may be furnished by any tribal, intertribal, Federal or State agency or probate court staff.

CHILD WELFARE COMMITTEE

2.404 Creation of a Child Welfare Committee. There is hereby established a Saginaw Chippewa Tribal Child Welfare Committee (hereinafter called the Committee).

- (a) Membership of the Committee. The Committee shall consist of seven (7) adult members of the Saginaw Chippewa Tribe, appointed by the Tribal Council, to serve at the pleasure of the Council. At the first meeting of the Committee, the members of the Committee shall elect one of the members as Chairman who shall preside over all meetings. Five members shall constitute a quorum of the Committee.
- (b) Powers of the Committee. The Committee shall have the power to:
 - (1) License and supervise foster and adoptive homes, child placing agencies, and child care centers.
 - (2) Make written recommendations to the Tribal Department regarding any case which has progressed past the Preliminary Inquiry stage and a child has been or will be removed from a parent, guardian unless or until Tribal Court has issued an order of reunification, termination of parental rights, or other order establishing permanency such as guardianship or adoption. In the case of multiple children from the same family, the Committee may make separate recommendations regarding each child when appropriate.
 - (3) In any ongoing proceeding of the Tribal Court where the court requests a recommendation from the Tribal Department, the Tribal Department shall consult with the Committee.
 - (4) The Tribal Department shall have a duty to inform the Committee within forty-eight (48) hours of a diversion and seek recommendations as diversion progresses.
 - (5) If the Tribal Department does not concur with the Committee recommendation, then the Department will so notify the

Committee in writing with reasons for their decision. Any written response of the Tribal Department shall become part of the record subject to review by the CPT.

- (6) The recommendations made by the Committee shall be considered prior to any placement decision or reunification by the Tribal Department in a case under 2.404(b)(2).
 - (7) Make recommendations to the Court concerning any proposed adoptions, guardianship, or termination of parental rights, or regarding the appropriate disposition of any minor in need of care.
 - (8) Make a delegation, revocable at will and pursuant to contract, of any of the foregoing powers to the any appropriate state, county, Federal or tribal agency, either as a general policy or upon specific cases.
 - (9) Act as guardian ad litem for minors in need of care upon appointment by the Court and agreement of the Committee.
- (c) Indian Child Welfare Act. The Child Welfare Committee shall have the following duties and powers to implement and enforce the Federal Indian Child Welfare Act, 25 USC Section 1901 et seq:
- (1) Receive notice pursuant to 25 USC Section 1912(a).
 - (2) Obtain, forthwith, a determination that the child is, or is not, an Indian child as defined by 25 USC Section 1903(4), from the tribal enrollment clerk or department, or from the Bureau of Indian Affairs.
 - (3) Recommend to the tribal chairman or tribal council intervention in state court proceedings under 25 USC Section 1911(c) and to cooperate with counsel for the tribe.
 - (4) Recommend to the tribal council or the tribal court the filing of a motion to transfer state proceedings to the tribal court of the declination of such transfer. The committee shall consider the ties of the child to the tribe and the services available to the child through the tribe in formulating its recommendation.
- (d) Review by Tribal Council. The Tribal Council of the Saginaw Chippewa Tribe (hereinafter referred to as the Tribal Council) shall have the power to review, modify, affirm or reverse all actions of the Committee which are not ordered by the Community Court.
- (e) Committee Not Investigators. Committee members shall not initiate, the gathering of information regarding the matter under review. All members shall have access to the same information. If an interested party contacts a Committee member outside of review, the Committee member shall refer the party to Tribal Family Services. The Committee may, however, request further information or that Tribal Family Services conduct further investigation.

- (f) Confidentiality. Meetings of the Committee shall not be open to the public except for persons authorized to attend by the Committee. The Committee shall maintain strict confidentiality regarding their reviews and deliberations. Notwithstanding the foregoing, the Committee may forward their reviews and deliberations to Tribal Council, for purposes of Tribal Council review pursuant to section 2.404(d). In such instances, Tribal Council shall be held to the same standards of strict confidentiality as the Committee. In no event, shall the identity of a reporter of child abuse or neglect be disclosed by any person unless such disclosure is permitted by a court order.
- (g) Recusal. Any Committee member who is the mother, father, grandparent, uncle, aunt or first cousin who is the subject of a file shall recuse him or herself from any involvement with the file and the case. A recused Committee member may provide factual information regarding the case to ACFS, but the recused Committee member must not have any involvement in any discussion, consideration, vote or recommendation regarding the file or case from which the Committee member is recused. If a quorum of members cannot be obtained due to recusal, then the Tribal Council may appoint alternate Committee members to serve on the case from which those Committee Members were recused.

2.405 Presenting Officer.

- (a) The Children's Court shall appoint a presenting officer to carry out the duties and responsibilities set forth in this code.
- (b) The presenting officer's qualifications shall be the same as the qualifications for the official who acts as prosecutor for the adult tribal court.
- (c) The presenting officer shall represent the People of the Saginaw Chippewa Tribe in all proceedings under this code.

2.406 Magistrate-Referee.

- (a) At the discretion of the Children's Court, the Saginaw Chippewa Tribal Magistrate shall act as a Children's Court referee to conduct a preliminary inquiry under Section 2.710 of this code.
- (b) The Children's Court may direct the Magistrate-Referee to conduct hearings in any case, except where:
 - (1) The allegations set forth in the minor-in-need-of-care petition is denied; or
 - (2) The hearing is one for termination of parental rights; or
 - (3) The hearing is one for adoption; or

- (4) Any party objects to a hearing by a referee.
- (c) Upon the conclusion of a hearing before a Magistrate-Referee, the Magistrate-Referee shall transmit his findings and recommendations for disposition in writing to the Children's Court judge. Prompt written notice of the findings and recommendations shall be given to the parties to the proceeding. The written notice shall also inform the parties of their right to a rehearing before the Children's Court judge.
- (d) A rehearing may be ordered by the Children's Court judge at any time and shall be ordered if any parties file a written request for a rehearing within three (3) days after receiving the Magistrate-Referee's report.
- (e) If a party does not request a rehearing by the Children's Court judge, the Magistrate-Referee's findings and recommendation become the order of the Children's Court after the Children's Court judge adopts and approves the findings and recommendations.

CHAPTER 2.5

JURISDICTION

2.501 Original Jurisdiction.

- (a) The Children's Court has exclusive, original jurisdiction of the following proceedings:
 - (1) Proceedings in which a minor is alleged to be a minor-in-need-of-care.
 - (2) Proceedings transferred to the tribe pursuant to the Indian Child Welfare Act, 25 USC Section 1901 et seq.
 - (3) Proceedings in which the adoption of a member of the Saginaw Chippewa Tribe and a domiciliary of its territory.
 - (4) Proceedings seeking to terminate parental rights to a minor.
 - (5) To determine the legal custody of any child or to appoint a guardian of the person or legal custodian of any child who comes within the Children's Court jurisdiction.
 - (6) For the issuance of orders of support of minor children;
 - (7) For the adoption of a person of any age;
 - (8) For judicial consent to the marriage, employment or enlistment of a child, when such consent is required by law; and
 - (9) For the treatment or commitment of a mentally ill or developmentally disabled child who comes within the Court's jurisdiction.
- (b) The Children's Court shall have the authority to adjudicate Petitions regarding paternity of a child who is the subject of a matter pending in the

Children's Court and to make an Order of Support in connection therewith. The Children's Court shall utilize the procedures set forth in §3.1718 of the Tribal Code when adjudicating paternity matters. The Children's Court may, in its discretion, refer matters concerning paternity to the Tribal Community Court.

- (c) Except as otherwise provided by law, the Children's Court shall have jurisdiction in proceedings concerning any adult:
 - (1) Who induces, aids, or encourages a child to violate any federal, tribal or state law; or
 - (2) Who abuses, ill-treats, neglects, or abandons a child who comes within the Court's jurisdiction.
- (d) The Court may issue temporary orders providing for protection, support, or medical or surgical treatment as it deems in the best interest of any child concerning whom a petition has been filed prior to adjudication or disposition of his care.
- (e) Nothing in this section shall deprive the Community Court of jurisdiction to appoint a guardian for a child nor of jurisdiction to determine the legal custody of a child upon writ of habeas corpus or when the question of legal custody is incidental to the determination of a cause in the Community Court, except that:
 - (1) If a petition involving the same child is pending in Children's Court or if continuous jurisdiction has been previously acquired by the Children's Court, the Community Court shall certify the question of legal custody to the Children's Court; and
 - (2) The Community Court at any time may request the Children's Court to make recommendations pertaining to guardianship or legal custody.
- (f) Where a custody award has been made in the Community Court in a dissolution of marriage action or another proceeding and the jurisdiction of the tribal court in the case is continuing, the Children's Court may take jurisdiction in a case involving the same child if he or she is child in need of care or otherwise comes within the jurisdiction set forth herein.

2.502

Indian Child Welfare Act Transfers from State Courts.

- (a) Pursuant to the Indian Child Welfare Act, 25 USC 1911(b), any state court may transfer to the Children's Court herein any proceeding for the foster care placement of, or termination of parental rights to, any Indian child who is a member of, or eligible for membership in, any of the tribes within the jurisdiction of the Court, if the Children's Court finds that the transfer would not be detrimental to the best interest of the child.

- (b) The Children's Court shall determine whether the transfer to the tribe's jurisdiction would be detrimental to the best interest of the child in a transfer proceeding initiated by the tribe after the order of transfer is received by the court clerk.
- (c) A court transferring a case to the tribe's jurisdiction under subsection (a) of this section shall transmit all documents and legal and social records, or certified copies thereof, to the receiving court, which court shall proceed with the case as if the petition had been originally filed or the adjudication had been originally made in this court.

2.503 Right to counsel-jury trial.

- (a)
 - (1) At his first appearance before the Court, the child and his parents, guardian or other legal custodian shall be fully advised by the Court of their legal rights, including the right to a jury trial as provided in subsection (d) of this section and the right to be represented by counsel, at his own expense, at every stage of the proceedings.
 - (2) A child or his parents, guardian, or other legal custodian may request separate attorneys under 2.313 (a)(1), when termination of the parent-child legal relationship is stated as a possible remedy in the summons under 2.311.
 - (3) The Court may appoint counsel where available without such request if it deems representation by counsel necessary to protect the interest of the child or of other parties.
- (b) If the child and his parents, guardian, or other legal custodian were not represented by counsel, the Court shall inform them at the conclusion of the proceedings that they have the right to file a motion for a new trial and that if such motion is denied, they have the right to appeal.
- (c) Upon the request of the Court, the presenting officer shall represent the tribe in the interest of the child in any proceedings brought under 2.501. The presenting officer, upon request by the Court shall represent the tribe in the interest of the child in any other proceedings under this Code.
- (d)
 - (1) A child, his parent or guardian, or any interested party may demand a trial by a jury of not more than six or the Court on its own motion may order such a jury to try any case. Unless a jury is demanded when applicable, it shall be deemed to be waived.
 - (2) Determinations of parentage of a child shall be made by bench trial.

2.504 Hearings-procedure-record-publicity.

- (a) The minor in need of care procedures set forth in this Code shall apply in all proceedings under 2.501, except 2.501(b).
- (b) Hearings shall be held before the Court without a jury, except as provided in 2.503, and may be conducted in an informal manner, except in proceedings brought under 2.501(b). The general public shall be excluded and the Court shall admit only such persons as have an interest in the case or the work of the Court, including persons whom the parents or guardian wish to be present. Hearings may be continued from time to time as ordered by the Court.
- (c) A verbatim record shall be taken of all proceedings which might result in the deprivation of custody. A verbatim record shall be made in all other hearings, including any hearing conducted by a referee, unless waived by the parties in the proceeding and so ordered by the judge or referee.
- (d) When more than one child is named in a petition alleging minor in need of care, the hearings may be consolidated; except that separate hearings may be held with respect to disposition.
- (e) Children's cases shall be heard separately from adult's cases, and the child or his parents, guardian, or other custodian may be heard separately when deemed necessary by the Court.
- (f) The name, picture, place of residence, or identity of any child, parent, guardian, other custodian, or person appearing as a witness in proceedings under 2.501 shall not be published in any newspaper or in any other publication nor given any other publicity unless for good cause it is specifically permitted by order of the Court. Any person who violates the provisions of this subsection (f) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine or not more than five hundred dollars, or by imprisonment in the tribal jail for not more than thirty days, or by both such fine and imprisonment.

2.505 Social study and other reports.

- (a) Unless waived by the Court, the Tribal Family Services or other agency designated by the Court shall make a social study and report in writing in all children's cases, except:
 - (1) If the allegations of a petition filed are denied, the study shall not be made until the Court has entered an order of adjudication as provided.
 - (2) The study and investigation in all adoptions shall be made as provided in Chapter 2.11 herein.

- (b) For the purpose of determining proper disposition of a child, written reports and other material relating to the child's mental, physical, and social history may be received and considered by the Court along with other evidence; but the Court, if so requested by the child, his parent or guardian, or other interested party, shall require that the person who wrote the report or prepared the material appear as a witness and be subject to both direct and cross-examination. In the absence of such request, the Court may order the person who prepared the report or other material to appear if it finds that the interest of the child, his parent or guardian, or other party to the proceedings so requires.
- (c) The Court shall inform the child, his parent or legal guardian, or other interested party of the right of cross-examination concerning any written report or other material as specified in subsection (b) of this section.

2.506 Effect of proceedings.

- (a) No adjudication or disposition in proceedings under 2.501 shall impose any civil disability upon a child or disqualify him from any tribal personnel system or military service application or appointment or from holding tribal office.
- (b) No adjudication, disposition, or evidence given in proceedings brought under 2.501 shall be admissible against a child in any criminal or other action or proceeding, except in subsequent proceedings under 2.501 concerning the same child.

2.507 Court Appointed Referees-qualifications-duties.

- (a) The Children's Court may appoint one or more referees to hear any case or matter under the Court's jurisdiction, except where a jury trial has been requested and in transfer hearings held pursuant to 2.501(d) and (e). Referees shall serve at the pleasure of the Court, unless otherwise provided by law.
- (b) Referees shall conduct hearings in the manner provided for the hearing of cases by the Court. Prior to any hearing, the referee shall inform the parties that they have the right to a hearing before the Children's Court in the first instance and that they may waive that right, but that by waiving that right, they are bound by the findings and recommendations of the referee, except as provided in subsection (d) of this section. If a request is made for a hearing before a Children's Court judge in the first instance, the referee shall terminate the hearing and transmit the case to the appointing judge.
- (c) At the conclusion of a hearing, the referee shall:
 - (1) Transmit promptly to the judge all papers relating to the case

- together with his findings and recommendations in writing;
 - (2) Advise the parties before him of his findings and recommendations; and
 - (3) Advise the parties of their right to review of the findings and recommendations by the judge.
- (d) A request for review shall be filed within five days after the conclusion of the hearing and shall clearly set forth the grounds relied upon. Such review shall be solely upon the record of the hearing before the referee. If review is not requested, the findings and recommendations of the referee shall become the decree of the court when confirmed by order of the judge. The judge may, on his motion, order a hearing of any case before a referee.

2.508 Court records-inspection-expungement.

- (a)
- (1) Records of Court proceedings shall be open to inspection by the parents or guardian, attorneys and other parties in proceedings before the Court, and to any agency to which legal custody of the child has been transferred, except records of Court proceedings in adoption and relinquishment shall be confidential and open to inspection only by Court order.
 - (2) With consent of the Court, records of Court proceedings may be inspected by the child, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies, except in relinquishment and adoption proceedings.
 - (3) Probation counselors' records and all other reports of social and clinical studies shall not be open to inspection, except by consent of Court.
- (b)
- (1) Any person who has been adjudicated under section 2.501, or who was the subject of a petition dismissed pursuant to 2.7 may petition the Court for the expungement of his record and shall be so informed at the time of adjudication, or the Court, on its own motion may initiate expungement proceedings concerning the record of any child who has been under the jurisdiction of the Court. Such petition shall be filed or such Court order entered no sooner than two years after the date of termination of the Court's jurisdiction over the person. Only by agreed stipulation of all parties involved may expungement be applied for prior to the expiration of two years from the date of termination of the Court's jurisdiction or termination of the Court's supervision under an informal adjustment.
 - (2) Upon the filing of a petition or entering of a Court order, 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 agency or official, if at the hearing the Court finds that:
 - (I) 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;
 - (II) 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
 - (III) 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 under 2.501 in which the Court orders the petition dismissed, the Court may order the records expunged. Such order of expungement may be entered without delay upon petition of the child or any party or upon the Court's own motion.

2.509 Appeal. Final orders and judgments may be appealed in accordance with subsection 1.514 of the Tribal Code.

CHAPTER 2.6
RESERVED

CHAPTER 2.7

MINOR-IN-NEED-OF-CARE

2.701 Complaint. A complaint may be filed by any person who has knowledge of the facts alleged. The complaint shall be signed by the complainant. The complaint shall contain:

- (a) A citation to the specific statutory provision of this code which gives the Children's Court jurisdiction of the proceedings; and
- (b) Name, age and address of the minor who is the subject of the complaint, if known; and
- (c) A plain and concise statement of the facts upon which the allegations are based, including the date, time and location at which the alleged facts occurred.
- (d) A list of witnesses known to the complainant at the time of filing the complaint.

2.702 Protective Warrant. The Children's Court may enter an order called a protective warrant, directing that a minor be taken into protective custody if the Children's Court finds there is probable cause to believe the minor is a minor-in-need-of-care.

2.703 Custody. A minor may be taken into protective custody by a law enforcement officer, Tribal Family Services if:

- (a) The person has reasonable grounds to believe that the minor is a minor-in-need-of-care and that the minor is in immediate danger from his surroundings and that his removal therefrom is necessary; or
- (b) A protective warrant pursuant to Section 2.702 of this code has been issued for the minor.
- (c) ACFS will make best efforts to notify ICWC immediately after it assumes protective custody of a child.

2.704 Law Enforcement Officer's Duties. A law enforcement officer or other person who takes a minor into protective custody, pursuant to Section 2.703 of this code, shall proceed as follows:

- (a) Release the minor to the minor's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate, unless shelter care is necessary as set forth in Section 2.703.
- (b) If the minor is not released, the officer shall make immediate and recurring efforts to notify the minor's parent, guardian or custodian to inform them of their right to be present with the minor until an investigation to determine the need for shelter care is made by Tribal Family Services, upon consultation with the Child Welfare Committee, pursuant to Section 2.705 of this code; and

- (c) If the minor is not released, the minor shall be taken immediately to the Children's Court counselor by the officer.

2.705 Tribal Family Services Duties.

- (a) Tribal Family Services, upon consultation with the Child Welfare Committee, shall not place a minor in shelter care unless a complaint is filed in accordance with Section 2.701 of this code or the Children's Court orders that a minor be taken into protective custody pursuant to Section 2.702 of this code.
- (b) If the minor's parent, guardian or custodian has not been contacted, Tribal Family Services shall make immediate and recurring efforts to inform them that the minor has been taken into custody and release the minor to the parent, guardian or custodian unless shelter care is necessary as set forth in Section 2.703 of this code.
- (c) If a minor is not released to his parent, guardian or custodian, Tribal Family Services shall place the minor in shelter care pending the preliminary inquiry.
- (d) If a minor is not released to his parent, guardian or custodian, Tribal Family Services, upon consultation with the Child Welfare Committee shall immediately explore alternative pre-adjudication custody arrangements and prepare recommendations for temporary care and custody for presentation at the preliminary inquiry.

2.706 Shelter Care.

- (a) A minor alleged to be a minor-in-need-of-care may be detained, pending a Court hearing, in the following places:
 - (1) A foster care facility on the reservation approved by the tribe; or
 - (2) A private family home on the reservation approved by the tribe; or
 - (3) A shelter care facility on the reservation approved by the tribe; or
 - (4) A private family home off the reservation approved by the tribe; or
 - (5) A shelter care facility off the reservation approved by the tribe.
- (b) A minor alleged to be a minor-in-need-of-care may not be detained in a jail or other facility used for the detention of adults. If such minor is detained in a facility used for the detention of alleged juvenile offenders pursuant to the Tribe's Juvenile Code, he must be detained in a room separate from alleged juvenile offenders.
- (c) Least Restrictive Setting. If a minor cannot be returned to his/her parents, the minor shall be placed in the least restrictive setting which most approximates a family and in which his/her special needs if any, may be

met. The minor shall also be placed in reasonable proximity to his/her home, taking into account any special needs of the minor.

2.707 Petition. Proceedings under the Children's Code shall be instituted by a petition filed by the presenting officer on behalf of the tribe and in the interests of the minor. The petition shall state:

- (a) The name, birthdate, and residence of the minor;
- (b) The names and residences of the minor's parents, guardian or custodian;
- (c) A citation to the specific statutory provision of this code which gives the Children's Court jurisdiction of the proceedings; and
- (d) If the minor is in shelter care, the place of shelter care and the time he was taken into custody.
- (e) A statement of facts claimed to bring the child within the jurisdiction of this Court.

2.708 Summons-Issuance-Contents-Service.

- (a) After a petition has been filed, the Court shall promptly issue a summons reciting briefly the substance of the petition. The summons shall also contain a statement, when appropriate, that the termination of the parent - child legal relationships is a possible remedy under the proceedings and shall set forth the rights extended under the Indian Civil Rights Act, 25 USC Section 1301 et. seq., and other legal rights of the child, the parents or guardian, or any other respondent, including the rights, at ones own expense, to have an attorney at the hearing on the petition.
- (b) No summons shall issue to any respondent who appears voluntarily, or who waives service, or who has promised in writing to appear at the hearing, but any such person shall be provided with a copy of the petition and summons upon appearance of request.
- (c) The summons shall require the person or persons having the physical custody of the child to appear and to bring the child before the Court at a time and place stated. If the person or persons so summoned are not the parents or guardian of the child, then summons shall also be issued to the parents or guardian, or both, notifying them of the pendency of the case and of the time and place set for hearing.
- (d) The Court on its own motion or on the motion of any party may join as a respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such

person. Any party to the action may request the issuance of compulsory process by the Court requiring the attendance of witnesses on his own behalf or on behalf of the child.

- (e) If it appears that the welfare of the child or of the tribe requires that the child be taken into custody, the Court may, by endorsement upon the summons, direct that the person serving the summons take the child into custody at once.
- (f) The Court may authorize the payment of necessary travel expenses incurred by persons summoned or otherwise required to appear, which payments shall not exceed the amount allowed to witnesses for travel by the tribal court.
- (g) Summons shall be served personally, pursuant to the tribal rules of civil procedure. If personal service is used, it shall be sufficient to confer jurisdiction if service is effected not less than two days before the time fixed in the summons for the appearance of the person served; except that personal service shall be effected not less than five days prior to the time set for a minor in need of care Adjudicatory hearing or a Termination hearing.
- (h) If the parents, guardian, or other legal custodian of the child required to be summoned under subsection (c) of this section cannot be found within the tribal jurisdiction, the fact of the child's presence within the tribe's jurisdiction shall confer jurisdiction on the Court as to any absent parent, guardian, or legal custodian if due notice has been given in the following manner:
 - (1) When the residence of the person to be served outside the tribe's jurisdiction is known, a copy of the summons and petition shall be sent by certified mail with postage prepaid to such person at his place of residence with a return receipt requested. Service of summons shall be deemed complete within five days after return of the requested receipt.
 - (2) When the person to be served has no residence within the tribe's jurisdiction and his place of residence is not known or when he cannot be found within the tribe's jurisdiction after due diligence, service may be by publication.

2.709 Appointment of guardian ad litem. At any stage of the proceedings, the Court may appoint a guardian ad litem to protect the interest of a child in proceedings, when:

- (a) No parent, guardian, legal custodian, or relative of the child appears at the first or any subsequent hearing in the case; or

- (b) The Court finds that there may be a conflict of interest between the child and his parent, guardian, or other legal custodian; or
- (c) The Court finds that it is in the child's interest and necessary for his welfare, whether or not a parent, guardian, or other legal custodian is present.

2.710 Preliminary Inquiry.

- (a) If a minor is placed in shelter care by Tribal Family Services, upon consultation with the Child Welfare Committee, pursuant to Section 2.705 (a) of this code, the Children's Court shall conduct a preliminary inquiry within forty-eight (48) hours for the purpose of determining:
 - (1) Whether probable cause exists to believe the minor is a minor-in-need-of-care; and
 - (2) Whether continued shelter care is necessary pending further proceedings.
- (b) If a minor has been released to his parent, guardian or custodian, the Children's Court or Magistrate-Referee shall conduct a preliminary inquiry within three (3) days after receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the minor is a minor-in-need-of-care.
- (c) If the minor's parent, guardian or custodian is not present at the preliminary inquiry, the Children's Court or Magistrate-Referee shall determine what efforts have been made to notify and to obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the parent, guardian or custodian, the Children's Court or Magistrate-Referee shall recess for not more than twenty-four (24) hours and direct the Children's Court counselor to make continued efforts to obtain the presence of a parent, guardian or custodian. If it does not appear that further efforts are likely to produce the parent, guardian or custodian, the Children's Court shall appoint a Guardian ad litem to serve until final adjudication and disposition of the complaint.
- (d) The Children's Court shall hear testimony concerning:
 - (1) The circumstances that give rise to the complaint or the taking of the minor into custody; and
 - (2) The need for shelter care.
- (e) If the Children's Court finds that probable cause exists to believe the minor is a minor-in-need-of-care, the minor shall be released to his parents and ordered to appear at the adjudicatory hearing unless:
 - (1) There is reasonable cause to believe that the minor will run away so that he will be unavailable for further proceedings; or

- (2) There is reasonable cause to believe that the minor is in immediate danger from his parents, guardian or custodian or the surroundings maintained thereby and that his removal from them is necessary.
- (f) Upon a finding that probable cause exists to believe that the minor is a minor-in-need-of-care and that there is a need for shelter care, the minor's shelter care shall be continued. The Court shall consider the Tribal Family Services recommendation prepared pursuant to Section 2.705(d) of this code.
- (g) If probable cause to believe the minor is a minor-in-need-of-care is not found, the complaint shall be dismissed and the minor shall be released.
- (h) Court Ordered Examinations. The Court may at any time after conducting a preliminary hearing at which probable cause to proceed upon a petition is found, order any involved child, parent, guardian or custodian to undergo a physical, mental or psychological examination by a qualified professional.

2.711 Investigation by the Tribal Family Services.

- (a) If the allegations of the complaint are admitted, suggest to the minor, his parent, guardian or custodian that they appear for an informal hearing pursuant to Section 2.712 of this code and schedule such a conference; or
- (b) Recommend that the presenting officer file a petition pursuant to Section 2.707 of this code, in the Children's Court for a formal adjudicatory hearing. The petition shall be filed within forty-eight (48) hours if the minor is in shelter care. If the minor has been previously released to his parent, guardian or custodian, relative or responsible adult, the petition shall be filed within ten (10) days.

2.712 Informal Adjustment Conference.

- (a) Tribal Family Services or the Magistrate-Referee may hold an informal conference with the minor and the minor's parent, guardian or custodian and Tribal Family Services, if held by the Magistrate-Referee, to discuss alternatives to the filing of a petition if:
 - (1) The admitted facts bring the case within the jurisdiction of the Children's Court; and
 - (2) An informal adjustment of the matter would be in the best interest of the minor and the tribe; and
 - (3) The minor and his parent, guardian or custodian and the Tribal Family Services consent to an informal adjustment with knowledge that the consent is voluntary.

- (b) This section does not authorize the Tribal Family Services or Magistrate-Referee to compel any involuntary action of the parties involved.
- (c) At the informal conference, Tribal Family Services or Magistrate-Referee may recommend that the Children's Court:
 - (1) Refer the minor and the parent, guardian or custodian to a community agency for needed assistance; or
 - (2) Order terms of supervision, calculated to assist and benefit the minor which regulate the minor's activities and which are within the ability of the minor to perform.
- (d) Tribal Family Services or Magistrate-Referee shall set forth in writing the conclusions reached at the informal conference and the disposition agreed to be the parties for remedying the situation and such report shall be made available to the Court, parents, guardian, guardian ad litem, custodian, the child advocate and presenting officer.
- (e) Any informal adjustment period shall not exceed six (6) months.
- (f) Tribal Family Services shall review the minor's progress every thirty (30) days. If at any time after the initial thirty (30) day period, Tribal Family Services concludes that positive results are not being achieved, Tribal Family Services shall recommend that the presenting officer file a petition pursuant to Section 2.707 of this code.
- (g) No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any proceedings against the minor under this code.

2.713 Continuance of Adjudicatory Hearing. The adjudicatory hearing may be continued upon:

- (a) Motion of the minor; or a parent, guardian or custodian; or
- (b) Upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the Children's Court finds the presenting officer has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available; or
- (c) Upon order of the Court during a period of Informal Adjustment.

2.714 Adjudicatory Hearing. The Children's Court shall conduct the adjudicatory hearing for the sole purpose of determining whether the minor is a minor-in-need-of-care. The hearing shall be private and closed.

- (a) The Children's Court shall hear testimony concerning the circumstances which gave rise to the complaint.
- (b) If the allegations of the petition are sustained by clear and convincing evidence, the Children's Court shall find the minor to be a minor-in-need-of-care and proceed to the dispositional hearing.
- (c) A finding that a minor is a minor-in-need-of care constitutes a final order for purposes of appeal.

2.715 Pre-dispositional Report.

- (a) The Tribal Department 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 minor, calculated to resolve the problems presented in the petition.
- (b) The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the minor under the proposed plan.
- (c) Preference shall be given to the dispositional alternatives which are listed in Section 2.717 of this code and select that which is the least restrictive of the minor's freedom and is consistent with the interest of the tribe. The report shall contain specific reasons for not recommending placement of the minor with his parents, guardian or custodian.
- (d) The Tribal Department shall present the predispositional report to the Children's Court, the person selected by the minor to represent him and the presenting officer, at least one (1) day before the dispositional hearing.

2.716 Dispositional Hearing.

- (a) A dispositional hearing shall take place not more than sixty (60) days after the adjudicatory hearing.
- (b) At the dispositional hearing, the Children's Court shall hear evidence on the question of proper disposition.
- (c) At the dispositional hearing, the Children's Court shall consider the predispositional report submitted by the Children's Court counselor and afford the parties an opportunity to controvert the factual contents and conclusions of the reports. The Children's Court shall also consider the alternative predisposition report prepared by the minor and his/her attorney, if any.

- (d) The dispositional order constitutes a final order for purposes of appeal.

2.717

Dispositional Alternatives. If a minor has been adjudged a minor-in-need-of-care, the Children's Court may make any of the following dispositions which are listed by priority. In the event that the Court does not place the children with relatives as described in (b) or (c) below, the Court shall make findings of fact that no relatives were known, available, willing or appropriate to place the children with, and document the steps the Tribal Department took to identify and locate prospective relative placements on either side of the child's family.

- (a) Permit the minor to remain with his parents, guardian or custodian subject to such limitations and conditions as the Court may prescribe; or
- (b) Place the minor with a relative within the external boundaries of the reservation subject to such limitations and conditions as the Court may prescribe; or
- (c) Place the minor in a relative home outside the external boundaries of the reservation subject to such limitations and conditions as the Court may prescribe; or
- (d) Place the minor in a foster home within the external boundaries of the reservation which has been approved by the tribe subject to such limitations and conditions as the Court may prescribe; or
- (e) Place the minor in a foster home outside the external boundaries of the reservation subject to such limitations and conditions as the Court may prescribe; or
- (f) Place the minor in shelter care facilities designated by the Court; or
- (g) Direct the presenting officer to file a petition to terminate parental rights under Chapter 2.9 of this Code .
- (h) If the Tribe has revoked a foster care license for cause as provided in Section 2.1003 (f)(2), and that home is licensed by another licensing agency or Tribe the home will be considered an unlicensed placement for purposes of determining the placement priorities in Section 2.717 unless the Indian Child Welfare Committee certifies that the home has corrected the circumstances giving rise to the revocation, or issues another foster care license to the home.

2.718

Dispositional Orders; Agreement; Duration; Review.

- (a) Whenever a minor is placed in a home or facility located outside the boundaries of the reservation, the Court shall require the party receiving

custody of the minor to sign an agreement that the minor will be returned to the Court upon order of the Court .

- (b) The dispositional orders are to be in effect for the time limit set by the Children's Court, but no order shall continue after the minor reaches the age of eighteen (18) years; and
- (c) The dispositional orders are to be reviewed at the Children's Court discretion, but at least once every six (6) months.

2.719 Modification of Dispositional Order.

- (a) A dispositional order of the Children's Court may be modified upon a showing of change of circumstances.
- (b) The Children's Court may modify a dispositional order at any time upon the motion of the following:
 - (1) The minor; or
 - (2) The minor's parents, guardian or custodian; or
 - (3) The Children's Court counselor.
- (c) If the modification involves a change of custody, the Children's Court shall conduct a hearing pursuant to Section 2.719(d) to review its dispositional order.
- (d) A hearing to review a dispositional order shall be conducted as follows:
 - (1) The Children's Court shall review the performance of the minor, the minor's parents, guardian or custodian and the Children's Court counselor and other persons providing assistance to the minor and the minor's family.
 - (2) In determining modification of disposition, the procedures prescribed in Sections 2.714 and 2.715 of this code shall apply.
 - (3) If the request for review of disposition is based upon an alleged violation of a court order, the Children's Court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

2.720 Family Placement Petition.

- (a) A relative of a child subject to a dispositional order of the court may petition the Court to be awarded placement of a child who has been adjudicated a minor-in-need-of-care by the court and placed with a non-relative. Such petition must be made no later than six (6) months after removal of the child from his or her home. If the petition is timely filed the court shall change the placement of the child to the relative's home provided the relative's home is safe and appropriate as determined by the

Tribal Department and placement is not contrary to the welfare of the child.

2.721 Court Records.

- (a) A record of all hearings under this code shall be made and preserved.
- (b) All Children's Court records shall be confidential and shall not be open to inspection to any but the following:
 - (1) The minor;
 - (2) The minor's parent, guardian or custodian;
 - (3) Law enforcement and human service personnel, including Tribal Family Services, the Child Welfare Committee or its delegate directly involved in the handling of the case;
 - (4) The presenting officer;
 - (5) Any other person by order of the Court upon petition from a person or entity having legitimate interest in the particular case.

2.722 Law Enforcement Records and Files.

- (a) Law enforcement records and files concerning a minor shall be kept separate from the records and files of adults.
- (b) All law enforcement records and files shall be confidential and shall not be open to inspection to any but the following:
 - (1) The minor;
 - (2) The minor's parent, guardian or custodian;
 - (3) Law enforcement and human service personnel, including Tribal Family Services, the Child Welfare Committee;
 - (4) The presenting officer;
 - (5) Any other person by order of the Court upon petition from a person or entity having legitimate interest in the particular case.

CHAPTER 2.8

CHILD ABUSE

2.801 Legislative Purpose. The Tribe hereby declares that the complete reporting of child abuse is a matter of tribal concern and that in enacting this chapter it is the intent of the Tribe to protect the children of the Tribe and to offer protective services in order to prevent any further harm to a child suffering from abuse. It is the further intent of the Tribe that the various federal, state and tribal medical, mental health, education and social services agencies impacting on child welfare matters find a common purpose through cooperative participation in the child protection team created in this article.

Definitions. As used in this article, and pursuant to Section 2.202 unless the context otherwise requires:

- (a)
- (1) "Abuse" or "child abuse or neglect" means an act or omission in one of the following categories which seriously threatens the health or welfare of a child:
 - (I) Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or death, and such condition or death is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or death circumstances indicate that such condition or death may not be the product of an accidental occurrence;
 - (II) Any case in which a child is subjected to sexual assault or molestation;
 - (III) Any case in which the child's parents, legal guardians, or custodians fail to take the same actions to provide adequate food, clothing, shelter, or supervision that a parent would take.
 - (2) In all cases, those investigating reports of child abuse shall take into account accepted child-rearing practices of the culture in which the child participates. Nothing in subsection 2.802(a)(1) shall refer to acts which could be construed to be a reasonable exercise of parental discipline.
 - (3) The definitions of subsection 2.802 (a)(1) shall not include the voluntary dissolution of a guardianship unless the elements of subsections 2.802(a)(1) are established.
- (b) "Child-protection team" means a multidisciplinary advisory group appointed by the Tribal Health Board Administration and the Child Welfare Committee consisting of a member of law enforcement, Anishnabeg Child and Family Services, a mental health professional with experience in juvenile counseling or adolescent mental health, a domestic violence advocate, a medical clinic representative either a nurse or a physician, ideally both, a court services personnel, an education representative, a member of the lay community and a member of the Indian Child Welfare Committee. Each agency may have more than one participating member on the team; except that, in voting on procedural or policy matters, each agency shall have only one vote. In no event shall an attorney member of the child protection team be appointed as guardian for the child or as counsel for the parties at any subsequent court proceedings,

nor shall the child protection team be composed of fewer than three persons. The role of the child protection team shall be advisory only. All persons serving on the CPT must pass a character and background check with fingerprinting and as assessment of character and fitness.

- (c) "Tribal Department" means the Anishnaabeg Child & Family Services of the Saginaw Chippewa Indian Tribe of Michigan .
- (d) "Law enforcement agency" means a tribal or Bureau of Indian Affairs police department, a police department in incorporated municipalities or the office of the county sheriff.
- (e) "Neglect" means acts which can reasonably be construed to fall under the definition of "child abuse or neglect" as defined in subsection (a) of this section.
- (f) "Receiving agency" means the department or law enforcement agency first receiving a report of alleged child abuse.
- (g) "Responsible person" means a child's parent, legal guardian, or custodian or any other person responsible for the child's health and welfare.
- (h) "Unfounded report" means any report made pursuant to this article which is not supported by some credible evidence.

2.803

Persons required to report child abuse or neglect.

- (a) Any person specified in subsection (b) of this section who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect shall immediately report or cause a report to be made of such fact to the tribal department or tribal law enforcement agency.
- (b) Persons required to report such abuse or neglect or circumstances or conditions shall include any:
 - (1) Physician or surgeon, including a physician in training, medical residents or interns;
 - (2) Child Health associate, child care workers and administrators;
 - (3) Medical examiner or coroner;
 - (4) Dentist;
 - (5) Osteopath;
 - (6) Optometrist;
 - (7) Chiropractor;
 - (8) Chiropodist or podiatrist;

- (9) Registered nurse, licensed practical nurse, or an individual employed as a community Health Representative (CHR) and health care practitioners;
- (10) Hospital personnel and administrators engaged in the admission, care, or treatment of patients;
- (11) School official or employee (including Head Start Employees), teachers, teacher's aides or assistants, school counselors, school guidance personnel, and school administrators;
- (12) Social worker or worker in a family care home or child care center, foster parents, and licensed or unlicensed marriage, family, and individual counselors;
- (13) Mental Health professionals, psychologists, and psychiatrists;
- (14) Pharmacists;
- (15) Alcohol or drug treatment personnel;
- (16) Person performing a healing role or practicing the healing arts;
- (17) Law enforcement and juvenile rehabilitation or detention facility employees; and
- (18) Commercial film and photo processors.

- (c) In addition to those persons specifically required by this section to report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in abuse or neglect, any other person may report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in child abuse or neglect to the tribal law enforcement agency or the tribal department.
- (d) Any person who willfully violates the provisions of subsection (a) of this section:
 - (1) Shall be subject to a civil penalty not to exceed five thousand dollars;
 - (2) Shall be liable for damages approximately caused thereby.

2.804 Required report of postmortem investigation.

- (a) Any person who is required by 2.803 to report known or suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report such fact immediately to the appropriate law enforcement agency and to the appropriate coroner or medical examiner. The law enforcement agency and the coroner or medical examiner shall accept such report for investigation and shall report their findings to the tribal law enforcement agency, the tribal prosecutor, and the tribal department.
- (b) The tribal department shall forward a copy of such report to the central registry as provided for in 2.807.

2.805 Evidence of abuse-color photographs and X-rays.

- (a) Any child health associate, person licensed to practice medicine, registered nurse or licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of patients, medical examiner, coroner, social worker, or local law enforcement officer who has before him a child he reasonably believes has been abused or neglected may take or cause to be taken color photographs of the areas of trauma visible on the child, without the consent of the parent, guardian or custodian. If medically indicated, such person may take or cause to be taken x-rays of the child, without the consent of the parent, guardian or custodian.
- (b) Any color photographs or x-rays which show evidence of child abuse shall be immediately forwarded to a receiving agency.

2.806 Temporary protective custody. The Chief Judge of the community court shall be responsible for making available a person appointed by the Chief Judge, who may be the associate judge, a referee, or any other officer of the Court, to be available by telephone at all times to act with the authorization and authority of the Children's Court to issue written or verbal temporary protective custody orders. These orders may be requested by the tribal department, a tribal law enforcement officer, an administrator of a hospital in which a child reasonably believed to have been abused or neglected is being treated, or any physician or family nurse practitioner who has before him a child he reasonably believes has been abused or neglected, whether or not additional medical treatment is required, if the belief that circumstances or condition of the child is such that continuing in his place of residence or in the care and custody of the person responsible for his care and custody would present an imminent danger to that child's life or health. The tribal department shall be notified of such action immediately by the court-appointed official in order that child protective proceedings may be initiated. In any case, such temporary custody shall not exceed seventy-two hours notwithstanding any provision 2.706 to the contrary.

2.807 Reporting procedures.

- (a) Reports of known or suspected child abuse or neglect made pursuant to this article shall be made immediately to the tribal department or law enforcement agency and shall be followed promptly by a written report prepared by those persons required to report. The receiving agency shall forward a copy of its own report to the central registry on forms supplied by the tribal department.
- (b) Such reports, when possible, shall include the following information:
 - (1) The name, address, age, sex and race of the child;
 - (2) The name and address of the responsible person;

- (3) The nature and extent of the child's injuries, including any evidence of previous known or suspected abuse or neglect to the child or the child's siblings;
 - (4) The names and addresses of the persons responsible for the suspected abuse or neglect, if known;
 - (5) The family composition;
 - (6) The source of the report and the name, address, and occupation of the person making the report.
 - (7) Any action taken by the reporting source;
 - (8) Any other information that the person making the report believes may be helpful in furthering the purposes of this article.
- (c) A copy of the report of known or suspected child abuse or neglect shall be transmitted immediately by the receiving agency to the tribal prosecutor's office and to the tribal law enforcement agency.
- (d) A written report from persons or officials required by this article to report known or suspected child abuse or neglect shall be admissible as evidence in any proceeding relating to child abuse, subject to the limitations of Chapter 2.3 and Section 2.801.

2.808

Action upon receipt of report.

- (a) The receiving agency shall make a thorough investigation immediately upon receipt of any report of known or suspected child abuse or neglect. The immediate concern of such investigation shall be the protection of the child.
- (b) The investigation, to the extent that it is reasonably possible, shall include:
 - (1) The nature, extent, and cause of the abuse or neglect;
 - (2) The identity of the person responsible for such abuse or neglect;
 - (3) The names and conditions of any other children living in the same place;
 - (4) The environment and the relationship of any children therein to the person responsible for the suspected abuse or neglect;
 - (5) All other data deemed pertinent.
- (c) The investigation shall, at a minimum, include a visit to the child's place of residence or place of custody and to the location of the alleged abuse or neglect and an interview with or observance of the child reportedly having been abused or neglected. If admission to the child's place of residence cannot be obtained, the Children's Court, upon good cause shown, shall order the responsible person to allow the interview, examination and investigation.
- (d)

- (1) The tribal department, except as provided in subsection (e) of this section, shall be the receiving agency responsible for the coordination of all investigations of all reports of known or suspected abuse or neglect. The tribal department shall arrange for such investigations to be conducted by persons trained to conduct either the complete investigation or such parts thereof as may be assigned. The tribal department may conduct the investigation independently or in conjunction with another appropriate agency or may arrange for the initial investigation to be conducted by another agency with personnel having appropriate training and skill. The tribal department shall provide for persons to be continuously available to respond to such reports. Tribes and state and federal agencies may cooperate to fulfill the requirements of this subsection (d). As used in this subsection (d), "continuously available" means the assignment of a person to be near an operable telephone not necessarily located in the premises ordinarily used for business by the tribal department or to have such arrangements made through agreements with local law enforcement agencies.
 - (2) Upon receipt of a report, if the tribal department reasonably believes abuse or neglect has occurred, it shall immediately offer social services to the child who is the subject of the report and his family and may file a petition in the Children's Court on behalf of such child. If, before the investigation is completed, the opinion of the investigators is that assistance of the tribal law enforcement agency is necessary for the protection of the child or other children under the same care, the tribal law enforcement agency shall be notified. If immediate removal is necessary to protect the child or other children under the same care from further abuse, the child or children may be placed in protective custody.
- (e) If a local law enforcement agency receives a report of known or suspected child abuse or neglect, it shall first attempt to contact the tribal department in order to refer the case for investigation. If the local law enforcement agency is unable to contact the tribal department, it shall make a complete investigation and may institute appropriate legal proceedings on behalf of the subject child or other children under the same care. The tribal law enforcement agency, upon receipt of a report and upon completion of any investigation it may undertake, shall immediately forward a summary of the investigatory data plus all relevant documents to the tribal department.
- (f)
- (1) It is the intent of this legislation to encourage the creation of one or more child protection teams. The Chief Judge of the Court shall have responsibility for inaugurating the child protection team.
 - (2) The child protection team shall review the files and other records of the case, including the diagnostic, prognostic, and treatment

services being offered to the family in connection with the reported abuse.

- (3) At each meeting, each member of the child protection team shall be provided with all available records and reports on each case to be considered.
- (4) At the team's next regularly scheduled meeting, or at the earliest possible time, the team shall report to Tribal Council and all involved agencies whether the lapses and inadequacies discovered earlier in the child protection system have been corrected.
- (5) The team shall make a report of its recommendations to the tribal department with suggestions for further action or stating that the team has no recommendations or suggestions. Tribes and state and federal agencies may cooperate in meeting the requirements of this subsection (f).

- (g) The director of the tribal department or his designee shall be deemed to be the coordinator of the child protection team.
- (h) The coordinator shall forward a copy of all reports of child abuse to the child protection team. The coordinator shall forward a copy of the investigatory report and all relevant materials to the child protection team as soon as they become available. The child protection team shall meet no later than one week after receipt of a report to evaluate such report of child abuse. The coordinator shall make and complete, within ninety days of receipt of a report initiating an investigation of a case of child abuse, a follow-up report, including services offered and accepted and any recommendations of the child protection team, to the central registry on forms supplied by the tribal department for that purpose.

2.809 Immunity from liability-persons reporting. Any person participating in good faith in the making of a report in a judicial proceeding matter pursuant to this Code , the taking of color photographs or x-rays, or the placing in temporary custody of a child pursuant to this article or otherwise performing his duties or acting pursuant to this article shall be immune from any liability, civil or criminal, that otherwise might result by reason of such reporting. For the purpose of any proceedings, civil or criminal, the good faith of any person reporting child abuse, any person taking color photographs or x-rays, and any person who has legal authority to place a child in protective custody shall be presumed.

2.810 Child abuse and child neglect diversion program.

- (a) The tribal prosecutor, upon recommendation of the tribal department or any person, may withhold filing a case against any person accused or suspected of child abuse or neglect and refer that person to a nonjudicial source of treatment or assistance, upon conditions set forth by the tribal department and the tribal prosecutor. If a person is so diverted from the

criminal justice system, the tribal prosecutor shall not file charges in connection with the case if the person participates to the satisfaction of the tribal department and the tribal prosecutor in the diversion program offered.

- (b) The initial diversion shall be for a period not exceed two years. This diversion period may be extended for one additional one-year period by the tribal prosecutor if necessary. Decisions regarding extending diversion time periods shall be made following review of the person diverted by the tribal prosecutor and the tribal department.
- (c) If the person diverted successfully completes the diversion program to the satisfaction of the tribal department and the tribal prosecutor, he shall be released from the terms and conditions of the program, and no criminal filing for the case shall be made against him.
- (d) Participation by a person accused or suspected of child abuse in any diversion program shall be voluntary.

2.811 Evidence not privileged. The privileged communication between patient and physician and between husband and wife shall not be a ground for excluding evidence in any judicial proceeding resulting from a report pursuant to this article.

2.812 Court proceedings-guardian ad litem.

- (a) The tribal department or law enforcement agency receiving a report under 2.805, in addition to taking such immediate steps pursuant to 2.804 or 2.701 et. seq. and 2.807 and 2.808 as may be required to protect a child, shall inform, within seventy-two hours, the appropriate Children's Court that the child appears to be within the Court's jurisdiction. Upon receipt of such information, the Court shall make an immediate investigation to determine whether protection of the child from further abuse is required and upon such determination may authorize the filing of a petition, as provided for in section 2.707.
- (b) In any proceeding initiated pursuant to this section, the Court shall name as respondents all persons alleged by the petition. In every such case, the responsible person shall be named as respondent. Summonses shall be issued for all named respondents in accordance with 2.708.
- (c) The Court in every case filed under this section shall appoint, a guardian ad litem at the first appearance of the case in Court .The guardian ad litem shall be provided with all reports relevant to the case made to or by any agency or person pursuant to this chapter and 2.701 et. seq. and with reports of any examination of the responsible person made pursuant to this section. The Court or the social services worker assigned to the case shall

advise the guardian ad litem of significant developments in the case, particularly any further abuse or neglect of the child involved. The guardian ad litem shall be charged in general with the representation of the child's interest. To that end he shall make such further investigations as he deems necessary to ascertain the facts, talk with or observe the child involved, interview witnesses and the foster parents of the child, and examine and cross-examine witnesses in both the adjudicatory and dispositional hearings and may introduce and examine his own witnesses, make recommendations to the court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child.

- (d) If the prayer of the petition is granted, the costs of this proceedings, including guardian ad litem and expert witness fee, may be charged by the Court against the respondent.

2.813

Central registry.

- (a) There shall be established a central registry of child protection in the tribal department for the purpose of maintaining a registry of information concerning each case of child abuse or neglect reported under this Code.
- (b) The central registry shall contain but shall not be limited to:
 - (1) All information in any written report received under this article;
 - (2) Record of the final disposition of the report, including services offered and services accepted;
 - (3) The plan for rehabilitative treatment;
 - (4) The name and identifying data, date, and circumstance of any person requesting or receiving information from the central registry;
 - (5) Any other information which might be helpful in furthering the purposes of this article.
- (c) The Tribal Council shall appoint a Director of the central registry who shall have charge of said registry. No person may serve as Director if they have been placed on the central registry in any jurisdiction; or have been convicted of any child abuse or neglect crime or any felony. Subject to available appropriations, the Director shall equip his office so that data in the central registry may be made available during nonbusiness hours through the use of computer technology. The Director shall be bound by all provisions of confidentiality and nondisclosure provided in this Code.
- (d) Independent Audit. The Tribal Council shall have an independent audit ("audit") conducted of the central registry on or before October 1, 2019 and additional audits thereafter as provided by the code. Such audits will be conducted by a person or persons retained by the Tribal Council for

such purpose (“auditor”). No person may serve as auditor if they have been placed on the central registry in any jurisdiction; have been convicted of any child abuse or neglect crime or any felony; are related by blood or by marriage to any person on the Tribal central registry; or have any relationship to any person on the central registry or any employee of the Tribe that presents an actual conflict or the appearance of a conflict with the duties of the auditor. Auditors shall not be employees of the Tribe. Tribal Council may require additional audits pursuant to this Section as it may deem appropriate. The auditor shall review the central registry and determine whether the central registry is compliant with the provisions of this Code. An auditor shall be bound by all requirements of nondisclosure and confidentiality provided in this Code unless otherwise provided in this Section.

- (1) The auditor shall report his or her findings in writing to the Tribal Council no later than ten (10) calendar days after the audit. The report by the auditor shall state whether the central registry is compliant with the requirements of this Code and shall include but not be limited to a finding of whether persons on the central registry were provided with written notice from the Tribe prior to their placement on the central registry. If the auditor deems the central registry noncompliant then the auditor’s report must identify the irregularities causing noncompliance to the Tribal Council and the Director. The auditor may not divulge any information to the Tribal Council otherwise protected from disclosure under this Code. The auditor must however report all irregularities to the Director with specificity with his or her recommendations to obtain compliance.
- (2) Within thirty (30) calendar days after receipt by the Director of the report from the auditor, the Director shall issue a report to the auditor either indicating implementation of the recommendations from the auditor or providing reason(s) not to implement such recommendations. Upon request of the Tribal Council, the auditor shall conduct whatever review necessary to verify the Director’s report and shall promptly report its findings to the Tribal Council.
- (3) If after the first audit of the central registry conducted under this section, the Director makes a finding that any person on the central registry was not provided written notice and opportunity for review prior to his or her placement on the central registry, then the Director shall issue notice to such person and such person shall have an opportunity to appeal the Decision as provided by Section 2.817 of this Code.

- (e) Reporting. If after an investigation conducted pursuant to this Code, the tribal department or tribal law enforcement agency determines that there is some credible evidence of abuse or neglect of a child pursuant to this Code then the department shall forward a copy of its report to the Director. Any allegations of abuse or neglect must be substantiated by the tribal department or tribal law enforcement agency prior to a referral to the Director.
- (1) Upon receipt of a referral by the tribal department or tribal police, the Director shall determine whether there is some credible evidence of alleged abuse or neglect by the person or persons who are the subject of the investigation (“Registrant”). The Director shall make his or her decision no later than ten (10) calendar days after receipt of the referral. The Director’s decision shall be entitled “ Decision of the Director” and shall be based solely upon the evidence and investigation submitted by the tribal department and/or the tribal police in a referral to the Director as provided in Subsection 2.813 (e)(2).
 - (2) If the Director finds that there is some credible evidence of child abuse or neglect based upon the report and evidence provided in the referral by the tribal department and/or the Tribal police then the Director shall place the Registrant, the referral and any information submitted in support of referral on the central registry. A criminal conviction of the Registrant for any crime of child abuse or neglect in any court of competent jurisdiction arising from the same evidence and circumstances provided in the referral shall be prima facie evidence of abuse or neglect under this Section 2.813.
 - (3) Persons on the central registry who are the subject of a subsequent referral to the central registry shall be provided the same notice and opportunity of appeal as required under this Section 2.813 and such referrals shall be subject to the provisions herein.
- (f) The Director shall send written notice to the Registrant not later than fourteen (14) calendar days after the Decision of the Director either to place the Registrant on the central registry or to deny placement on the central registry. Such notice shall include a copy of the report and evidence provided in the referral. The Director shall not release data that would identify the person who made the report or who cooperated in a subsequent investigation which he reasonably finds to be detrimental to the safety or interest of such person. Notice shall be sent by certified mail to the last known address of the subject of the report.

- (g) Unless an investigation of a report conducted pursuant to this Code determines there is some credible evidence of alleged abuse or neglect, the Director shall not enter the Registrant on the central registry and all information identifying the subject of the report shall be expunged from the Director's records.
- (h) In all other cases, the record of the reports including the name of any person added to the central registry shall be expunged no later than (10) ten years after such person was added to the central registry except as provided below:
 - (1) A person on the central registry shall remain on the central registry for life if such person was placed on the central registry as a result of any criminal conviction in a court of competent jurisdiction of a crime against a child including but not limited to a final adjudication by any court of competent jurisdiction of child abuse or neglect.
 - (2) A person on the central registry shall remain on the central registry for life if they receive a final adjudication from any court of competent jurisdiction of child abuse or neglect or are convicted of a crime provided in Subsection 2.813(h)(1) at any time subsequent to being placed on the central registry whether or not such conviction resulted from the same incident or matter causing placement of such person on the central registry.
 - (3) A person on the central registry shall remain on the central registry for life if such person is the subject of a subsequent referral to the Director for actions that occurred after placement on the central registry but prior to such person's tenth consecutive year on the registry and the Director finds some evidence of child abuse or neglect.
- (i) At any time the subject of a report or a Decision of the Director may receive, upon request, a report of all information pertinent to the subject's case contained in the central registry, but the Director shall not release data that would identify the person who made the report or who cooperated in a subsequent investigation which he reasonably finds to be detrimental to the safety or interest of such person.
- (j) A Decision by the Director to place the Registrant on the central registry may be appealed by the Registrant placed as provided in this Code.
- (k) Written notice of any amendment, sealing, or expungement made pursuant to the provisions of this article shall be given to the subject of such report

and to the tribal department. The latter, upon receipt of such notice, shall take similar action regarding such information in its files.

- (l) Any person who willfully permits or who encourages the release of data or information contained in the central registry to persons not permitted access to such information by this article shall be subject to a civil penalty not in excess of five thousand dollars (\$5,000.00). There shall be no private cause of action and a civil penalty under this provision may only be enforced through a civil complaint filed by the Tribe in the Saginaw Chippewa Tribal Court in accordance with the procedures of Title III of the Tribal Code.
- (m) The Director shall adopt such rules and regulations as may be necessary to encourage cooperation with other tribes, states and the national center on child abuse and neglect. Such rules shall not be effective unless formally approved by the Tribal Council.

2.814

Confidentiality of records.

- (a)
 - (1) Except as provided in this section, reports of child abuse or neglect and the name and address of any child, family or informant or any other identifying information contained in such reports shall be confidential and shall not be public information.
 - (2) Disclosure of the name and address of the child and family and other identifying information involved in such reports shall be permitted only when authorized by a court for good cause. Such disclosure shall not be prohibited when there is a death of a suspected victim of child abuse or neglect and the death becomes a matter of public record, the subject of an arrest by a law enforcement agency, and the subject of the filing of a formal charge by a law enforcement agency.
 - (3) Any person who violates any provision of this subsection (a) shall be subject to a civil penalty of not more than five thousand dollars (\$5,000.00).
- (b) Only the following persons or agencies shall be given access to child abuse or neglect records and reports:
 - (1) The law enforcement agency or department investigating a report of known or suspected child abuse or neglect or treating a child or family which is the subject of the report;
 - (2) A physician or family nurse practitioner who has before him a child whom he reasonably suspects to be abused or neglected;
 - (3) An agency having the legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report or

- record or a parent, guardian, legal custodian, or other person who is responsible for the child's health or welfare;
- (4) Any person named in the report or record who was alleged as a child to be abused or neglected or, if the child named in the report or record is a minor or is otherwise incompetent at the time of the request, his guardian ad litem;
 - (5) A parent, guardian, legal custodian, or other person responsible for the health or welfare of a child named in a report, with protection for the identity of reporters and other appropriate persons;
 - (6) A court, upon its finding that access to such records may be necessary for determination of an issue before such court, but such access shall be limited to in camera inspection unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it.
 - (7) The central registry of child protection;
 - (8) All members of a child protection team;
 - (9) All members of the Indian Child Welfare Committee when Committee review is conducted pursuant to this Code unless any Committee Member is recused from the case.
 - (10) Such other persons as a court may determine, for good cause.
- (c) After a child who is the purported victim of a report to the central registry reaches the age of eighteen (18) years, access to that report shall be permitted only if a sibling or offspring of such child is before any person mentioned in subsection (b) of this section and is a suspected victim of child abuse or neglect. The amount and type of information released shall depend upon the source of the report and shall be determined by regulations established by the Director of the central registry. However, under no circumstances shall the information be released unless the person requesting such information is entitled thereto as confirmed by the Director of the central registry and the information released states whether or not the report is founded or unfounded. A person giving access to the names or other information identifying the subject of a report shall not divulge or make public any identifying information unless he is a district attorney or other law enforcement official and the purpose is to initiate court action or unless he is the subject of a report.

2.815 Character Investigations. Pursuant to the Indian Child Protection and Family Prevention Act, 25 U.S.C. Chapter 34 § 3207, Tribal employees or prospective employees whose duties involve regular contact with, or control over, Indian children must meet minimum standards for such employment. The Tribe shall conduct an investigation of the character of each individual so employed or under consideration for such employment. In investigating the character of each individual, the Tribe shall focus on whether the individual has been found guilty of, or entered a plea of nolo contendere, or guilty, to any offense under Federal,

State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, prostitution; or crimes against persons. The Tribe shall not employ individuals in such positions if they have been found guilty of, or entered a plea of nolo contendere, or guilty, to any offense under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, prostitution; or crimes against persons.

2.816 A minor child who is in any type of placement outside of his or her home for any reason pursuant to this Title shall not be placed with an individual who is listed on the Central Registry or in a home where an individual who is listed on the Central Registry also resides.

2.817 Appeals

- (a) A Decision of the Director under this Code may be appealed to the Tribal Court by filing a Notice of Appeal with the Tribal Court and serving such Notice on the Director and the General Counsel for the Tribe within five (5) calendar days after the filing. Any appeal under this Section shall be filed within sixty (60) days after the date of the Decision of the Director. Appeals made under this Section shall not be heard by a jury.
- (b) The Tribal Court shall make its ruling on any appeal under this Section within ninety (90) days after the filing of the Notice of Appeal.
- (c) The Tribal Court may consider evidence, hear witnesses, receive exhibits relating to the appeal, and may make such other determinations as generally are provided for in its rules.
- (d) The Tribal Court may affirm or reverse the Decision of the Director, or may modify such decision as the Tribal Court in its sound discretion deems appropriate. The Decision of the Director shall be affirmed unless it is arbitrary and capricious. The Tribal Court shall not award attorneys' fees, costs, or extraordinary or punitive damages against the Tribe or Tribal officials.
- (e) The decision of the Tribal Court on an appeal under this Section shall be final and shall not be subject to appeal to the Saginaw Chippewa Tribe Appellate Court or any other court.
- (f) The Tribal Council consents to suits seeking judicial review under this Section, in satisfaction of the requirements of Title III, subsection 3.102(c) of the Saginaw Chippewa Tribal Code, and waives the Tribe's common law immunity from suit subject to the limitation that the relief granted in lawsuits seeking judicial review of the decision of the Director may only include prospective injunctive relief, orders of remand, and declaratory judgments and shall not include any monetary damages.

CHAPTER 2.9

TERMINATION OF PARENTAL RIGHTS

- 2.901 Parental rights to a child may be terminated by the Saginaw Chippewa Tribal Children's Court according to the procedures of this section.
- 2.902 Definitions. As used in this article, unless the context otherwise requires:
- "Guardian ad litem" means a person who has been appointed to represent a child who is the subject of a written petition for the termination of the parent child legal relationship.
- 2.903 Petition. Proceedings to terminate parental rights shall be instituted by a petition filed by the presenting officer on behalf of the tribe pursuant to Section 2.707 or by the parents or guardian of the child. The petition shall state:
- (a) The name, birth date, and residence of the minor;
 - (b) The names and residences of the minor's parents, guardian or custodian;
 - (c) If the child is in detention or shelter care, the place of detention or shelter care and the time he was taken into custody.
 - (d) The grounds upon which termination is sought.
- 2.904 Upon receipt of the petition, the Children's Court shall set a date for the termination hearing which shall be not more than thirty (30) days after the Children's Court receives the petition from the presenting officer. The hearing may be continued:
- (a) Upon motion of the minor's parent, guardian or custodian or by the minor or his guardian ad litem, or the Tribal Department .
 - (b) Upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the Children's Court finds the presenting officer has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available.
- 2.905 Right to a Separate Hearing-right to counsel-no jury trial.
- (a) Termination of a parent-child legal relationship shall be considered only after the filing of a written petition alleging the factual grounds for termination, and termination of a parent-child legal relationship shall be considered at a separate hearing following an adjudication of a child as

dependent or neglected. Such motion shall be filed at least thirty days before such hearing.

- (b) After a petition for termination of a parent-child legal relationship is filed pursuant to this article, the parent or parents shall be advised of the right to counsel, as set forth in the Indian Civil Rights Act, 25 USC 1301, et. seq., and the provision of 2.313 of this Code .
- (c) An attorney, who shall be the child's previously appointed guardian ad litem whenever possible, shall be appointed to represent the child's best interest in any hearing determining the involuntary termination of the parent-child legal relationship. Additionally, said attorney shall be experienced whenever possible, in juvenile law. Such representation shall continue until an appropriate permanent placement of the child is effected or until the Court's jurisdiction is terminated. If a respondent parent is a minor, a guardian ad litem shall be appointed and shall serve in addition to any counsel requested by the parent.
- (d) There shall be no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship.

2.906 Notice-abandonment. Before a termination of the parent-child legal relationship based on abandonment can be ordered, the petitioner shall file an affidavit stating what efforts have been made to locate the parent or parents of the child subject to the motion for termination. Such affidavit shall be filed not later than ten days prior to the hearing.

2.907 Criteria for termination.

- (a) The court may order a termination of the parent-child legal relationship upon the finding of either of the following:
 - (1) That the child has been abandoned by his parent or parents;
 - (2) That the child is adjudicated as a minor in need of care and all of the following exist:
 - (I) That an appropriate treatment plan approved by the Court has not been reasonably complied with by the parent or parents or has not been successful;
 - (II) That the parent is unfit;
 - (III) That the conduct or condition of the parent or parents is unlikely to change within a reasonable time.
- (b) In determining unfitness, conduct, or condition, the Court shall find that continuation of the legal relationship between parent and child is likely to result in grave risk of death or serious injury to the child or that the conduct or condition of the parent or parents renders the parent or parents unable or unwilling to give the child reasonable parental care. In making

such determinations, the Court shall consider, but not be limited to, the following:

- (1) Emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs of the child;
- (2) Conduct towards the child of a physically or sexually abusive nature;
- (3) History of violent behavior;
- (4) A single incident of life-threatening or gravely disabling injury or disfigurement of the child;
- (5) Excessive use of intoxicating liquors or narcotic or dangerous drugs which affect the ability to care and provide for the child;
- (6) Neglect of the child;
- (7) Long-term confinement of the parent;
- (8) Injury or death of a sibling due to proven parental abuse or neglect;
- (9) Reasonable efforts by child-caring agencies which have been unable to rehabilitate the parent or parents.

- (c) In considering any of the factors in subsection (b) of this section in terminating the parent-child legal relationship, the Court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The Court shall review and order, if necessary, an evaluation of the child's physical, mental, and emotional conditions.

2.908 Pre-Termination Report.

- (a) Within two (2) days of receiving the petition, the Children's Court judge shall order the preparation of pre-termination report by the Tribal Department.
- (b) The Tribal Department shall consult with the minor's parents and all social services, health, education and other personnel who have had prior professional contacts with the minor and his parents, guardian or custodian to determine whether termination of parental rights is consistent with the best interests of the child. The Tribal Department may also review any of the minor's previous Children's Court records.
- (c) The Tribal Department shall prepare a written report containing the professional opinions of all personnel with who he has consulted. The report shall be presented to the Children's Court at least two (2) days before the termination hearing.

2.909 Termination Hearing. The Children's Court shall conduct the termination hearing for the sole purpose of determining whether parental rights shall be terminated. The hearing shall be private and closed.

- (a) The Children's Court shall hear testimony concerning:
 - (1) The circumstances that gave rise to the petition; and
 - (2) The need for termination of parental rights.

- (b) The Children's Court may terminate the parental rights of the parent(s) to his child if it finds clear and convincing evidence that:
 - (1) The parent has abandoned his child; or
 - (2) The minor 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 functions; or
 - (3) The parent(s) have subjected the minor to willful and repeated acts of sexual abuse; or
 - (4) The voluntary written consent of both parents has been acknowledged before the Court.
 - (I) Voluntary Relinquishment of Parental Rights: Parental rights may be voluntarily terminated with the written consent of both parents, if such is acknowledged by the Court. Relinquishment shall not be accepted or acknowledged by the Court prior to ten (10) days after birth of the child. The Court shall ensure that the parents understand the consequences of the voluntary termination prior to approving it. Parents who wish to relinquish their parental rights shall be provided an interpreter if they do not understand the English or Ojibwe language used by the Court. Prior to the entry of an order of termination, the Court shall determine that entry of such an order is in the best interest of the affected child and of the Tribe.
 - (II) Withdrawal of Voluntary Relinquishment: Parents who have voluntarily relinquished parental rights to a child may withdraw such consent to termination of parental rights at any time prior to the issuance of a final decree of adoption. Parents who have voluntarily relinquished parental rights may withdraw such consent and demand re-establishment of the parent child relationship upon a showing to the Court of clear and convincing evidence that such consent was obtained by fraud or duress.

2.910 Expert testimony.

- (a) Subject to the availability of funds, an indigent parent has the right to have appointed one expert witness of his own choosing whose reasonable fees and expenses, subject to the Court's prior review and approval, shall be paid from the Court funds.

- (b) All ordered evaluations shall be made available to counsel at least fifteen days prior to the hearing.

2.911 Dispositional Alternatives.

- (a) If parental rights to a child are terminated, the Children's Court shall:
 - (1) Place the minor in a foster care or shelter care facility which has been approved by the tribe; and
 - (2) Proceed to the adoption section of the tribal code.
- (b) If parental rights to a child are not terminated, the Children's Court shall make a disposition according to Section 2.717 of this code.

2.912 Review of child's disposition following termination of the parent-child legal relationship.

- (a) The Court, at the conclusion of a hearing in which it ordered the termination of parent-child legal relationship, shall order that a review hearing be held not later than ninety days following the date of the termination. At such hearing, the agency or individual vested with custody of the child shall report to the Court what disposition of the child, if any, has occurred, and the guardian ad litem shall submit a written report with recommendations to the Court, based upon an independent investigation, for the best disposition of the child.
- (b) If no adoption has taken place within a reasonable time and the Court determines that adoption is not immediately feasible or appropriate, the Court may order that provision be made immediately for long-term foster placement of the child.

2.913 Effect of decree.

- (a) An order for the termination of the parent-child legal relationship divests the child and the parent of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other, except for the right of the child to inherit from the parent. Such child's right of inheritance shall be terminated only by a final decree of adoption.
- (b) No order or decree entered pursuant to this article shall dis-entitle a child to any benefit due him from any third person, including, but not limited to, any Indian tribe, any agency, and state, or the United States.
- (c) After the termination of a parent-child legal relationship, the former parent is not entitled to any notice of proceedings for the adoption of the child by another, nor has he any right to object to the adoption or to otherwise participate in such proceedings.

2.914 Appeals. Final orders and judgments may be appealed in accordance with subsection 1.514 of the Tribal Code.

AMENDMENT

CHAPTER 2.10

DETENTION SHELTER CARE FACILITIES, FOSTER CARE LICENSING AND REGULATION, and CHILD CARE CENTER LICENSING AND REGULATION

2.1001 Standard for Shelter Care and Detention Facilities.

- (a) The Children's Court judge or chief judge of the Saginaw Chippewa Tribal Court shall prescribe and enforce rules and regulations governing the operation of detention and shelter care facilities. The Children's Court judge or chief judge of the Saginaw Chippewa Tribal Court may assign the responsibility to another qualified tribal, intertribal or Indian-controlled agency, including the Child Welfare Committee or Tribal Family Services.
- (b) The rules and regulations shall include, but are not limited to, the following:
 - (1) Cleanliness standards;
 - (2) Heat, water, and light standards;
 - (3) Personnel standards;
 - (4) Visitation privileges;
 - (5) Occupancy standards;
 - (6) Provisions for medical and dental care; and
 - (7) Provisions for food, furnishing, clothing, and toilet articles.

2.1002 Care and Treatment in Shelter Care and Detention Facilities.

- (a) The Children's Court judge or chief judge of the Saginaw Chippewa Tribal Court shall prescribe and enforce policies and procedures governing the administration of detention and shelter care facilities, when such facilities are available within the tribe's territory.
- (b) Such policies and procedures shall include, but are not limited to, the following:
 - (1) A minor shall not be punished, ridiculed or criticized for expressing through speech, custom, or dress (1) the minor's Indian or tribal heritage; or (2) any other racial cultural or physical or mental attribute.
 - (2) A minor shall be allowed to wear his hair according to his personal taste. The minor shall not be punished, ridiculed or criticized for the hairstyle he selects.

- (3) A minor may wear his own clothes rather than clothes supplied by the detention facility, so long as they comply with minimum standards of cleanliness.
- (4) Incoming and outgoing mail may be inspected for contraband, but shall not be read.
- (5) Whenever possible, the minor shall be allowed to attend the school in which he is enrolled. When school attendance is not possible, school work and educational assistance, at the minor's level of development, shall be provided for the minor in detention facilities.
- (6) A minor shall be allowed to attend traditional religious ceremonies provided that he is accompanied by a parent, guardian or custodian; has received consent to do so by the Children's Court judge; and returns immediately to the detention or shelter care facility.
- (7) A minor shall be allowed to attend the funeral and any related activities of his brother, sister, mother, father, aunt, uncle, grandmother, grandfather or cousin, whether they be natural or adopted provided that:
 - (I) His parent, guardian or custodian request and receive permission from the Children's Court Judge; and
 - (II) He is accompanied by a parent, guardian or custodian; and
 - (III) He return immediately to the shelter care or detention facility.
- (8) A minor shall be given the opportunity to engage in physical exercise everyday.
- (9) A minor shall not be locked alone in a room unless there exists a reasonable belief that he may cause physical injury to himself or others if not locked alone. While the minor is locked alone in a room he must be observed at least once an hour. The confinement shall not continue unnecessarily and shall be reported weekly to the Court.
- (10) Except as provided in Section 2.1002(b)(9), a minor shall not be punished by physical force, solitary confinement or deprivation of meals or family visits.
- (11) A minor in a detention facility shall not be required to perform work duties except on order of the Court in the service of the tribe or in fulfillment of a restitution obligation. A minor in shelter care shall not be required to perform work duties.

2.1003 Foster Care and Child Care Center Licensing and Regulation.

- (a) License Requirement. Any person or entity desiring to provide care, custody and control to any minor child or group of minor children subject to the jurisdiction of the Saginaw Chippewa Community Court shall make application on the form provided therefore to the Child Welfare Committee.

- (b) Exemptions from License. Any home or institution in which a minor member of the Saginaw Chippewa Tribe is placed shall be licensed by the Child Welfare Committee, another Indian Tribe, or a state government agency. No minor member shall be placed in an unlicensed home or institution unless:
 - (1) said home is the residence of a separated or divorced parent, grandparent, brother, sister, step-parent, step-brother, step-sister, uncle, aunt, nephew, niece, or first cousin, first cousin once-removed, second cousin, second cousin once-removed, third cousin, third cousin once-removed, great-aunt or great-uncle, great great-aunt or great great-uncle, great-grandparent, step-great grandparent, or a step-family member of any familial relation named above, or legal or biological parent, or other closely related family member of said child's half-sibling.
 - (2) such placement is made in an emergency situation for a period not exceeding forty-eight (48) hours prior to a hearing thereon in the Tribal Court.
- (c) Home Study or Child Care Center Study. A home study or child care center study, whichever is applicable, shall be completed and filed with the Child Welfare Committee within thirty (30) days of the filing of an application for a license. Said study shall verify the contents of the application and the compliance by the applicant with the provisions of applicable subsections (i), Standards of Foster Care or (j), Standards of Child Care Center. The study may be prepared by a social worker, case worker or trainee from Tribal Family Services upon the request of the Child Welfare Committee for such study.
- (d) Issuance of License; Content. The Child Welfare Committee shall act to issue a license or to refuse license issuance within ten (10) working days of the filing of the home study or child care center study. If the license is issued, it shall specify the person or entity to whom it is issued, the residence or center which is to be licensed, the age, sex and number of children who may be placed at that residence, and any special conditions upon the license.
- (e) Licenses; Duration; Renewal. License shall be issued for a temporary period of six (6) months, and for annual periods thereafter. All licenses shall expire at the conclusion of the period for which they are issued, unless, not less than thirty (30) days prior to said expiration, an application for an annual license is filed as required by subsection (a). Upon filing of an application for the renewal of a previously issued license, reverification of compliance by the licensee or entity with the provisions of applicable subsections (i), Standards of Foster Care or (j), Standards of Child Care Center, shall be filed by the person of the agency completing the initial home study or child care center study with the Child Welfare Committee

not less than (5) working days prior to the expiration of the prior license. An annual license renewal shall be issued upon reverification of compliance with subsection (i) or (j) unless conditions are found to justify revocation of a license for cause pursuant to subsection (f)(2).

- (f) Revocation and Termination. A license issued by the Child Welfare Committee will terminate:
- (1) Automatically upon notice to that body that:
 - (I) The licensed person or entity voluntarily relinquishes the license or,
 - (II) The residence of the licensed person or the location of the entity has changed, or
 - (III) The licensed person has died or becomes totally incapacitated or the licensed entity has dissolved.
 - (IV) At the end of one year, unless the licensed person or entity has filed an application for license renewal as required by Section 2.1003(e) above.
 - (2) For cause, upon finding the Child Welfare Committee by the preponderance of the evidence adduced at a hearing thereon, of:
 - (I) Physical, sexual or emotion abuse of any person in the licensed residence or center, or
 - (II) Refusal for a substantial period, following written notification by the Child Welfare Committee to correct conditions amounting to noncompliance with the applicable provisions of Sections (i), Standards of Foster Care or (j), Standards of Child Care Center, or
 - (III) Physical or emotional incapacity, not amounting to total incapacity, of person(s) living or working within the licensed foster home or child care center, which substantially impairs the ability of the foster home or the child care center to provide adequate care, custody and control of the children placed therein.
 - (IV) Refusal, for a period of two (2) years without good cause, to accept any offered child placement, or
 - (V) Persistent refusal to cooperate with tribal court, placement agency or natural parental efforts to reunite and revitalize the natural family unit except in cases where parental rights have been terminated.
 - (VI) The Foster home has accepted the placement of children from another placing agency or Tribe without notifying the Indian Child Welfare Committee, and retains those children after being notified that the Indian Child Welfare Committee will not approve the additional children living in the home due to the impact on the foster children the

Tribe previously placed in the home as specified in section 2.1003(h)(10).

- (g) Appeals; License Denial or Revocation. Any person or entity who is denied a license or whose license is revoked shall have a right to a hearing before the Executive Board within five (5) working days of such request, provided the appeal is filed within thirty (30) days of the revocation or denial. Upon receipt of an adverse decision of the Executive Board, said person or entity may request a full hearing before the Tribal Council by the filing of a written request with the Tribal Secretary within ten (10) days of the adverse decision by the Executive Board. The hearing before the Executive Board and the Tribal Council shall provide the person or entity with the full and fair opportunity to confront in person the witnesses against him or her, to present any dispute the contents of any written reports and the request of the licensing body or council to compel the attendance of any witness. The hearing before the Tribal Council shall be held within thirty (30) days of receipt by the Tribal Secretary of a written request for a full hearing on the adverse decision. Upon review of all the oral and written evidence and arguments, Tribal Council's decision shall be final and shall not be subject to appeal to any court or jurisdiction.
- (h) Duty to Report. Any person or entity having either a temporary or permanent license issued under this Code shall report to the social agency who prepared the home study or child care center study thereon any material change in the condition of the licensed residence or center or the circumstances of the persons living or working within the licensed residence or center within five (5) days of such change. This duty to report shall include, but are not limited to the following:
- (1) Change of residence or change of location of center; or
 - (2) Increase in household size or center size; or
 - (3) Marital Separation or divorce of a person(s) living or working within the licensed residence or center; or
 - (4) Death of a person(s) who, immediately prior to death, was living or working within the licensed residence or center; or
 - (5) Dissolution of the licensed entity; or
 - (6) Total incapacitation of a person(s) living or working in the licensed residence or center; or
 - (7) Change in employment status, outside the licensed residence or center, of person(s) living or working in the licensed residence or center; or
 - (8) Counseling, treatment, or therapy on an inpatient or outpatient basis for an emotional, mental, or substance abuse problem of person(s) living or working in the licensed residence or center; or
 - (9) Arrests or criminal convictions of person(s) living or working in the licensed residence or center.

- (10) Any information regarding a child or children who are placed in the foster home by another child placing agency or Tribe so that the Indian Child Welfare Committee may make a decision as to whether the home remains an appropriate placement for the foster children placed there in light of the needs or issues of the newly added foster children.
- (i) Standards of Foster Care. In carrying out the powers and responsibilities delegated thereto by this Code , the Child Welfare Committee shall apply the following standards for foster care:
 - (1) The number of children to be placed in a foster home will be determined by the ability of the foster parents to provide appropriate care by the size of the home in the light of the Indian lifestyle and custom.
 - (2) Sleeping and dining facilities will conform to reservation standards and customs.
 - (3) A foster home license applies only to the residence where the family is living at the time of the application for a license is made, and a change of residence automatically terminates the license. Prior to a change of residence, the licensee shall notify the Child Welfare Committee and if there is an independently placed child in that home, the person for whom the child is given care must also be notified.
 - (4) The home shall be so constructed, arranged, and maintained as to provide adequately for the health and safety of the occupants.
 - (5) Heating, ventilation, and light shall be sufficient to provide a comfortable atmosphere.
 - (6) Sleeping arrangements must provide adequate opportunities for comfortable rest and privacy.
 - (7) Refrigeration shall be available for the care of perishable foods.
 - (8) Water supply and sewage disposal systems must meet the requirements of the Indian Health Service.
 - (9) Members of the foster family shall be of current good character, habits, and relationships within the family shall be such that the wholesome atmosphere for the child will be insured. All members of the foster family shall be willing to accept the foster child into the home as a member of the family group.
 - (10) The persons in charge of the foster home shall be suitable temperament to the care for the children; shall understand the needs of the children; shall be capable of handling an emergency situation promptly and intelligently; and shall be willing to cooperate fully with the children's own parents and the supervising agency.
 - (11) Any person single or married may apply for a foster home license
 - (12) For preschool foster children, one foster parent will be uncommitted to employment or other full-time outside activity.

For primary school age children, there will be a babysitter available for care of the children during the time that the foster parent is away.

- (13) The income available to a foster home prior to placement of a child must be sufficient to support the foster family at the reservation level standards.
- (14) The responsibility for the child's health care shall rest with the foster parents who shall cooperate with the parents or the child placement agency, public or private, and the physicians and health authorities in the community.
- (15) Foster parents shall be responsible for providing opportunity for the religious education and attendance at religious services of the children in accordance with the expressed wishes of their parents.
- (16) Each person in charge of the foster home shall keep a record of the children's names and ages, and the date of his entry and discharge.
- (17) Prior to licensing of a foster care home, the prospective foster parents shall receive training in the goals and objectives of foster care from the Tribal Child Welfare Committee. Foster parents shall participate when on-going training is provided by the Tribal Child Welfare Committee.

(j) Standards of Child Care Center. In carrying out the powers and responsibilities delegated thereto by this Code, the Child Welfare Committee shall promulgate regulations and standards for child care centers ("Regulations") which shall not become effective until approved by resolution of the Tribal Council. The Regulations shall include, at a minimum the following criteria:

- (1) Caregiver to Child ratios that meet or exceed State minimums for the same.
- (2) Caregiver training and qualifications, including the following areas: health and safety, child development, infectious diseases, child abuse, first response and choking prevention.
- (3) Standards limiting Caregiver's ability to discipline the Children, including enforcement of such standards.
- (4) Child care center building and premises requirements and maintenance, which shall include the interior and exterior standards that provide for the health and safety of the children and Caregivers.
- (5) Emergency planning to minimize the danger from tornadoes, floods, fires and other emergencies.
- (6) Requirements for the proper use and maintenance of child care center equipment.
- (7) Requirements for the structure of the child care center's daily activities.
- (8) Requirements for the use of child care center transportation.
- (9) Infection control standards for child care center.

- (10) Requirements for food preparation and food serving at the child care center.
- (11) Standards for the care of ill children, including inclusion and exclusion from the child care center program, taking of medication and other health related rules.
- (12) Standards which address the health of the Caregiver, including the ability to maintain employment as a Caregiver at the child care center.
- (13) Requirements that the child care center establish, implement and maintain policies, procedures and protocols for child care center operations in areas including child development, health and safety and disciplinary measures.

(k) Confidentiality; Exceptions

- (1) The contents of all applications, reports, home studies and appeal proceedings filed or prepared pursuant to this Code shall be considered and kept confidential except:
 - (I) when such confidentiality is waived in writing, by the person or entity who is the subject of such application, report, home study or proceeding, and by the parent, guardian or tribal court in any case involving a specific child, or
 - (II) when required by the tribal court in the exercise of its jurisdiction over a particular minor child, in any proceeding and for any purpose, or
 - (III) in a criminal prosecution charging the licensed person or entity with an offense against any person, including a child placed in their care in the residence which is the subject of the application, report, home study, or proceeding, or
 - (IV) in any suit or action, arising out of the exercise by the Saginaw Chippewa Tribe of its power and authority to license foster homes or place children therein, when said suit name the Saginaw Chippewa Tribe or its subsidiary organizations, officers, agents, or employees as defendants, or
 - (V) when such applications, report, home study, or proceeding is necessary in further tribal proceedings relating to the subject matter thereof.
- (2) Offense; Penalty. It shall be an offense for any person to disclose information made confidential under subsection (1) of this section. Upon conviction of such offense in the Tribal Court, any person so convicted shall be punished by a term of imprisonment of not more than thirty (30) days, by a fine of not more than \$500.00 or both such fine and imprisonment.

CHAPTER 2.11

ADOPTION

- 2.1101 Purpose. The purpose of this chapter is to protect the rights and the welfare of Indian children, natural parents and adoptive parents. It is the policy of the Saginaw Chippewa Tribal Council to favor the adoption of children of the Saginaw Chippewa Indian Tribe by members of the Saginaw Chippewa Tribe. The Saginaw Chippewa Tribe's Tribal Council looks with disfavor upon adoption of Saginaw Chippewa tribal children by non-members of the Saginaw Chippewa Tribe.
- 2.1102 Jurisdiction. The Saginaw Chippewa Tribal Children's Court shall have jurisdiction over all adoptions where the person to be adopted is a domiciliary and a member of the Saginaw Chippewa Tribe.
- 2.1103 Who May File a Petition. Any person over the age of twenty-one (21) may file a petition to adopt a minor domiciliary of the Saginaw Chippewa Tribe. In the case of married persons maintaining a home together, the petition must be a joint petition, except when one of the spouses is the natural parent of the child to be adopted.
- 2.1104 Parent's Consent to Adoption.
- (a) The adoption of a child may be ordered by the Children's Court of the Saginaw Chippewa Tribe, when written consent, executed by all living parents has been filed with the Court. Any consent to an adoption made by a parent or parents must be signed in the presence of the Children's Court of the Saginaw Chippewa Tribe or before an officer of another jurisdiction authorized to administer oaths. The Court shall satisfy itself that persons consenting have been informed of the nature and consequences of their act.
 - (b) The minority of the parents shall not be a bar to the right of consent nor shall it invalidate such consent.
 - (c) The right of non-consenting natural parents may be terminated pursuant to and upon the grounds set forth in this Code. As to children of such parents, the Children's Court may execute consent to adoption or authorize another person to do so.
 - (1) If the parental rights of the non-consenting natural parents have been terminated and the Children's Court is executing consent to the adoption or authorizing another person to do so, the consent of the Indian Child Welfare Committee to the adoptive placement shall be required to finalize the adoption of the child

- 2.1105 Withdrawal of Consent. A consent to adoption may be withdrawn by any parent whose parental rights have not been terminated at any time before entry of the final order of adoption.
- 2.1106 Petition for Adoption. The petition for adoption shall be filed with the Children's Court of the Saginaw Chippewa Tribe. It shall be signed by both adopting parents and shall contain:
- (a) The full name, residence, documentary proof of the date and place of the child, and the degree of Indian blood of the child.
 - (b) The full name, residence, date and place of birth, degree of Indian blood, if any occupation and documentary proof of marital status of adopting parents.
 - (c) Proof of parental and grand-parental consent to the adoption from any of said persons not deceased at the time the petition is heard.
 - (d) Proof of the Indian Child Welfare Committee's consent to the adoption if required under 2.1104(c)(1) in the event the child's natural parents are non-consenting and parental rights were terminated pursuant to section 2.9 of this Code, or by any other Court of competent jurisdiction.
 - (e) An agreement by the adopting parents that it is their desire that the relationship of a parent and child be established between them and the child.
 - (f) A full description and statement of value of all property owned or possessed by the child to the best of the petitioner's knowledge.
 - (g) Any Petition of Adoption that does not comply with the requirements of this Section 2.1106 shall be invalid regardless of when such Petition of Adoption was filed unless a Final Decree of Adoption was entered on or before March 5, 2014.
- 2.1107 Investigative Report. Upon the filing of a petition for adoption, the Children's Court of the Saginaw Chippewa Tribe shall request the Tribal Department to inquire into, investigate, and report to the Court, within thirty (30) days, the suitability of the child for adoption, the financial ability, moral and physical fitness, and general background of the adopting parent or parents; and to make recommendations on the proposed adoption. The Children's Court may also request any local, state, or Federal agency to provide assistance in obtaining information as to the suitability of the adopting parents for the adoption.

- 2.1108 Hearing. Within ten (10) days of the submission of the report of the Tribal Department, the Children's Court shall fix a time for a hearing on the petition for adoption.
- 2.1109 Notice. The adopting parent or parents and adoptive child shall be given notice of the hearing and shall personally appear at the hearing. All other persons whose consent is necessary to the adoption shall be duly notified and shall appear. The Court may confirm the decision of any person whose consent is necessary to the adoption but such persons shall not be subject to cross examination regarding an adoption decision.
- 2.1110 Report and Final Decree of Adoption. Not less than ninety (90) days nor more than one hundred twenty (120) days after the child has been in custody of the adoptive parents, and adoptive parents and the child shall appear personally before the Children's Court and report to the Court as to the welfare of the child, the current status of the adoption home, and the desire of the adoptive parents to finalize the adoption. If the Court is satisfied that the interest of the child is best served by the proposed adoption, a final decree of adoption may be entered. The Children's Court or adoptive parents may request a six (6) month extension after which a final adoption decree must be entered or the child returned to the custody of the Children's Court of the Saginaw Chippewa Tribe.
- 2.1111 Effect of the Final Judgment.
- (a) After the final judgment of adoption is entered the relationship of parents and child and the rights and duties and other legal consequences of the natural relation of the child to parents shall thereafter exist between the child and the adoptive parents.
 - (b) The status of the child as a member of the Saginaw Chippewa Tribe shall not be affected by any adoption.
 - (c) After the final decrees of adoption is entered, the natural parents of the adopted child, except a natural parent who is also an adoptive parent, or the spouse of an adoptive parent, shall be relieved of all parental responsibilities for such child and have no right over such child or right to inherit his property or descent or distribution or otherwise.
 - (d) Minor children adopted by order of the Children's Court shall assume the surname of the persons by whom they are adopted, unless the Children's Court orders otherwise, and such adoptive children shall be entitled to the same rights of persons and property as children or heirs of the persons adopting them.
- 2.1112 Confidential Nature of Proceedings and Record. Unless the Children's Court shall otherwise order, all hearings held in proceedings under this chapter shall be

confidential and shall be held in closed Children's Court sessions, without the admission of any person other than the interested parties and witnesses. All papers, records, petitions or files pertaining to proceedings under this chapter, except the final judgment of adoption, shall be kept by the Community Court in locked files.

Legislative History

Enacted April 10, 1982, Resolution L&O-05-82 (app'd by BIA ___/___/___); amended June 18, 1986, Resolution L&O-04-86 (app'd by BIA July 11, 1986); amended February 25, 1992, Resolution 92-025; Subsections 2.507 (subsequently renumbered as 2.509) and 2.914 amended December 22, 1998 by Resolution 99-024. Amended by Resolution 07-033 on December 13, 2006. Subsection 2.224 added; Subsections 2.501 and 2.503 amended by Resolution 12-047 approved on February 10, 2012. Subsections 2.205, 2.404 and 2.703 amended by Resolution 12-140 approved on August 22, 2012. Subsections 2.204, 2.205, 2.718, 2.813 and 2.814 amended by Resolution 12-142 approved on September 5, 2012. Subsection 2.803(d) amended by Resolution 13-008 approved October 17, 2012. Subsection 2.1106(c) amended; Subsection 2.1104(c)(1) and 2.1106(g) added; new Subsection 2.1106(d) added by Resolution 14-075 approved March 5, 2014. Subsection 2.802(b) amended; Subsections 2.808(f)(4), 2.808(f)(5), 2.808(f)(6) and 2.808(f)(7) deleted; Subsection 2.808(f)(8) amended and Subsection 2.808(g) and 2.808(j) deleted by Resolution 14-077 approved on March 12, 2014. Subsections 2.404(b), 2.404(g), 2.802(a)(2), 2.814(b), 2.1003(g), 2.1003(k) and 2.1109 amended; Subsection 2.802(a)(3) added by Resolution 14-085 approved on March 26, 2014. Section 2.314 added by Resolution 14-110 approved June 4, 2014. SECTION 2.404(c)-SECTION 2.404(g) erroneously omitted on March 26, 2014 were reinserted to June 4, 2014 version of Title II. Section 2.314(a) amended by Resolution 14-121 approved June 18, 2014. Subsection 2.314(g), Section 2.717, Subsection 2.717(d), Subsection 2.717(e), Subsection 2.717(g), Section 2.721, Section 2.722, Subsection 2.722(b)(3), Subsection 2.1003(e) and Subsection 2.1003(h) amended; new Subsection 2.717(c), Subsection 2.717(f), Subsection 2.717(h), Section 2720, Subsection 2.1003(f)(2)(VI) and Subsection 2.1003(h)(10) added by Resolution 14-127 approved June 23, 2014. Subsection 2.1003(b)(1) amended by Resolution 16-012 approved on October 7, 2015. Subsection 2.404(a) amended by Resolution 16-049 approved on December 16, 2015. Subsections 8.13(a), 8.13(c), 8.13(g), 8.13(h), 8.13(i), 8.13(j), 8.13(l), 8.13(m), 8.14(a)(3), and 8.14(c) amended; new Subsection 8.13(d) *et seq*, 8.13(e) *et seq*, 8.13(f), and 8.13(h)(1)-(3) added new Section 8.16 and 8.17 *et seq* added by Resolution 19-125 approved on August 28, 2019.