

CHILDREN'S PROTECTION CODE
Ordinance # 98-900-01

Article I. Short Title and Purpose.

1.01. *Short Title.* This Ordinance shall be entitled "The Children's Protection Code."

1.02. *Purpose.* The Children's Protection Code shall be liberally interpreted and construed to fulfill the following expressed purposes:

- a. To provide for the welfare, care and protection of the Indian children and families of the Little River Band of Ottawa Indians;
- b. To provide for the safety of Indian children and preserve family unity;
- c. To provide procedures for intervention in state court proceedings regarding Indian Children;
- d. To provide procedures for the transfer of jurisdiction over Indian Children from state and other Tribal Courts to this Tribal Court;
- e. To provide for the exercise of the Tribe's rights and responsibilities under the Indian Child Welfare Act (ICWA) of 1978; and
- f. To provide for the exercise of the Tribe's rights and responsibilities under the Michigan Family Preservation Act (MIFPA) of 2012.

Article II. Philosophy and Goals.

2.01. *Philosophy and Goals.*

- a. To take such actions that will best serve the spiritual, emotional, mental and physical welfare of the child and the best interest of the Tribe to prevent the abuse, neglect and abandonment of children;
- b. To provide a continuum of services for children and their families with emphasis whenever possible on prevention, early intervention and community-based alternatives;
- c. To protect the rights of and ensure fairness to the children, parents, guardians, custodians and other parties who come before Tribal Court, the state courts, or other Tribal courts;
- d. To recognize, acknowledge, and respect the many diverse and important Anishnaabek customs, traditions and ways in the Indian community; and

- e. To preserve and strengthen the child’s cultural and Anishnaabe identity whenever possible.

Article III. Adoption; Amendment; Repeal; Severability.

3.01. Adoption. This Ordinance is adopted by motion on June 8, 1998, which superseded the Interim Code adopted by Resolution #96-0701-04.

- a. Amended by Resolution #06-1213-823 Permanent Adoption to change the number of members on the Binojeeuk Commission.
- b. Amended by Resolution #07-1031-564 Permanent Adoption of changes to Code to change name of the Code, add Section 31, adjust time lines to conform with court rules and other codes, and modify the definitions.
- c. Amended by Resolution #17-0405-127 adopting amendments to conform with current regulations and laws, including Indian Child Welfare Act of 1978, the Michigan Indian Family Preservation Act of 2012, Michigan Bureau of Children and Adult Licensing, amend and add definitions, add Tribal Customary Adoptions, and to fix grammatical errors, typos, and formatting.
- d. Amended by Resolution #19-0911-236 adopting amendments to incorporate Section 5.01.c. One Judge Philosophy, amend Section 5.03 Continuing Jurisdiction of the Court, amend Section 6.01 Counsel for Parent, delete Section 8.01 Child Protection Team (CPT), amend persons mandated to report and delete anonymous reports in Article XI, amend Section 24.01 Jurisdiction, amend Section 24.02.b. to include the Family Services Department, and to fix errors and formatting.

3.02. Amendment. The Ordinance may be amended by the Tribal Council in accordance with the Constitution and any rules set forth in the Administrative Procedures Act – Ordinances.

3.03. Repeal. This Ordinance may be repealed by the Tribal Council in accordance with the Constitution and any rules set forth in the Administrative Procedures Act – Ordinances.

3.04. Severability Clause. If any portion of this Ordinance or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

Article IV. Definitions.

4.01. Definitions. For purposes of this Ordinance, certain terms are defined in this Article. The word “shall” is always mandatory and not merely advisory.

- a. *Abandoned.* The failure of the parent(s) or guardian to provide reasonable support and to maintain regular contact with the child, including provisions of adequate supervision. The voluntary temporary transfer of physical custody of a child by such child's parent(s) or guardian with extended family members or voluntary consent to placement does not constitute abandonment.
- b. *Abuse or Child Abuse.* Harm or threatened harm to a child's health or welfare that occurs through non-accidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for the child's health or welfare.
- c. *Active Efforts.* Actions to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and to reunify the Indian child with the Indian family. Active efforts include reasonable efforts as required by title IV-E of the Social Security Act, 42 USC 670 to 679c, and also include, but are not limited to as defined under MIFPA and ICWA.
- d. *Adjudication.* A formal court hearing requiring the presence of all parties, attorneys, witnesses, and caseworkers where evidence is presented and the court makes findings regarding the allegations in the petition and determines whether the minor is a child in need and whether the minor should be made a temporary ward of the Court. If the allegations are not sustained, the Court shall dismiss the matter and release the child. If clear and convincing evidence sustains the allegations the court shall find the minor to be a child in need and set the matter for disposition. Other orders needed for the child's protection may be entered by the Court at this time.
- e. *Adult.* A person eighteen (18) years of age or older or a person under the age of eighteen (18) who has been emancipated by order of a court of competent jurisdiction.
- f. *Best Interests of the Indian Child.* The best interests of the Indian child means the best interests of the child's tribe, and the implementation of the policies and placement preferences set forth in ICWA. Meeting the best interests of the Indian child requires recognition of the importance of maintaining connections with family, siblings, extended family, the Tribe, and the child's cultural heritage.
- g. *Binojeeuk Commission.* A commission established under this Code, whose members are appointed by the Tribal Council to protect the best interests of the children of the Tribe and promote the stability and security of the Tribe.
- h. *Child.* A person under eighteen (18) years of age and has not been emancipated by order of a court of competent jurisdiction.
- i. *Child-in-Need-of-Care.* A child:

1. Who has no parent(s), guardian(s) or custodian(s), with legal authority, who is willing, available and able to care for the child;
 2. Who has suffered or is likely to suffer a physical injury which causes or creates a substantial risk of death, disfigurement or impairment of bodily function
 3. Who is or is alleged to be a victim of sexual abuse;
 4. Who has committed delinquent acts as a result of parental pressure, guidance, approval or failure to properly supervise;
 5. Who is a victim of “abuse” as defined in this Code;
 6. Who is a victim of “neglect” as defined in this Code;
 7. Who is born addicted to alcohol and/or exposed to a controlled substance;
 8. Whose parents are separated and no court of competent jurisdiction has issued a temporary custody and support order;
 9. Whose parent has been convicted of or where there are substantiated allegations of a violent crime or criminal sexual crime against the other parent or a sibling of the child, or other crime of a nature that demonstrates the parent’s unfitness to adequately parent the child; or
- j. Who is a drug endangered child (i.e. a minor found in a home (i) with caregivers who are manufacturing controlled substances in/around the home or (ii) where caregivers are selling or using controlled substances and the children are exposed to the drug or drug residue). *Child Placement Agency*. An agency licensed or approved pursuant to Tribal or state law.
- k. *Child Welfare Caseworker*. Member of the Family Services Department of the Little River Band of Ottawa Indians who serves as liaison and case supervisor for families and children coming under the provisions of this Code.
- l. *Controlled Substance*. A controlled substance as defined by 1978 PA 368, MCL 333.7403, as amended, or Tribal law.
- m. *Court Appointed Special Advocate*. A person appointed by the Court to represent the interests of a child who is before the Court.
- n. *Court or Tribal Court*. The Little River Band of Ottawa Indians Tribal Court.
- o. *Custodian*. A person other than a parent(s) or guardian(s) to whom temporary physical custody of the child has been given by the Court, parent(s) or guardian(s) unless such right is limited by Court order. Any Indian person who has legal

custody of an Indian child under tribal law or custom or under state law or to whom temporary physical custody has been transferred by the parent(s) of such child.

- p. *Custody.* Custody means physical custody or legal custody or both, under any applicable Tribal law or Tribal custom or State law. A party may demonstrate the existence of custody by looking to Tribal law, Tribal custom, or State law.
- q. *Customary Adoption.* This is a form of permanent adoption based on a traditional tribal custom recognized by the community which, without terminating parental rights, gives a child a permanent parent-child relationship with someone other than the child's parents and that permanently suspends the rights of a parent or parents to provide for the care, custody, and control of the child.
- r. *Department.* The Department means the Michigan Department of Health and Human Services or a successor department or agency.
- s. *Dispositional Hearing.* A formal court hearing including all parties, attorneys, and caseworkers that follows the adjudication hearing. At disposition, if the goal is family reunification and conditions do not permit immediate return of the child, the responsible social workers must present a detailed case plan to the Court that includes services to assist the child and family. If the plan includes placement of the child with someone other than the parent or a relative, the plan must state the specific reasons for making such a recommendation.
- t. *Domicile.* Domicile means: (1) For a parent or Indian custodian, the place at which a person has been physically present and that the person regards as home; a person's true, fixed, principle, and permanent home, to which that person intends to return and remain indefinitely even though the person may be currently residing elsewhere. (2) For an Indian child, the domicile of the Indian child's parents or Indian custodian or guardian. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child's custodial parent.
- u. *Emergency Proceeding.* Emergency proceeding means and includes any court action that involves an emergency removal or emergency placement of an Indian child.
- v. *Extended Family Member.* A person who has reached age eighteen (18) and who is the child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first cousin, second cousin, stepparent or non-kinship relations recognized by Immediate Family members.
- w. *Foster Home* A household or facility licensed and approved pursuant to Tribal or state law.

- x. *Guardian.* A person who has qualified as a guardian of a minor under a parental or spousal nomination or a court order issued under state law or appointed by a tribal court under tribal code or custom.
- y. *Guardian Ad Litem.* An attorney or lay advocate appointed by the Court to assist the child's best interests.
- z. *Immediate Family.* Parent, stepparent, siblings, step-siblings, half-siblings.
- aa. *Indian.* Any person who is a member of a federally recognized Indian Tribe.
- bb. *Indian Child.* An unmarried person under the age of eighteen (18) and either: (1) Is a member of a federally recognized Indian Tribe; or (2) Is eligible for membership in an Indian Tribe and is the biological child of a member of an Indian Tribe.
- cc. *Indian Child's Tribe.* Indian Child's Tribe means: (1) The Indian Tribe in which an Indian child is a member of or eligible for membership; or (2) In the case of an Indian child who is eligible for membership in more than one tribe, the Indian child's tribe is the tribe with which the Indian child has the most significant contacts.
- dd. *Indian Custodian.* Any Indian who has legal custody of an Indian child under applicable Tribal law or custom or under applicable State law, or whom temporary physical care, custody, and control has been transferred by the parent of such child. An Indian may demonstrate that he or she is an Indian custodian by looking to Tribal law or Tribal custom or State law.
- ee. *Indian Foster Home.* A foster home where one or more of the licensed or approved foster parents is an "Indian" as defined in 25 U.S.C. 1903(3).
- ff. *Indian Tribe.* Any Indian Tribe, band, nation, or other organized group or community of Indians federally recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians.
- gg. *Informal Adjustment Conference.* If the admitted facts bring the complaint within the jurisdiction of the Court, the Court, Presenting Officer, Family Services Department, and the minor's parent, guardian, or custodian may elect to discuss a voluntary service plan prior to the preliminary and/or adjudication hearings.
- hh. *Least Restrictive Placement.* The placement alternative that is the least restrictive upon the child and the family for obtaining the objective of the Court and this Code. This dispositional concept directs the Court to select the least drastic method of achieving its goal.
- ii. *Legal Custody.* The right to 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 extraordinary care. The parents of a child are vested with legal custody unless such custody is taken from the parents or limited by Court Order. Only the parents with legal custody may give temporary physical and/or legal custody of a child to an adult member of their immediate or extended family unless such right is limited by Court Order.

- jj. *Legal Father.* A male, defined by law, with recognized legal rights associated with a minor child or children:
1. Who is married to the minor child's mother at any time from the child's conception to the child's birth;
 2. Who legally adopts the minor child;
 3. Who has been determined to be the minor child's legal father in an order of filiation or judgment of paternity; or
 4. Whose paternity is established by the completion and filing of an acknowledgement of parentage in accordance with the provisions of the Acknowledgement of Parentage Act.
 5. Whose paternity is established in one of the following ways:
 - (i) The man and the mother of the minor acknowledge that he is the minor's father in a writing executed, notarized and filed in the Tribal or probate court;
 - (ii) The man and the mother file a joint written request for a correction of the certificate of the birth pertaining to the minor that results in issuance of a substituted certificate recording the birth;
 - (iii) The man acknowledges the minor without the acknowledgment of the mother with the written approval of the Court; or
 - (iv) A man who by order of affiliation or by judgment of paternity is determined to be the father of the minor.
- kk. *License.* Any official and revocable authorization granted for a limited period of time by the Binojeeuk Commission pursuant to this Ordinance to an individual or entity to conduct or participate in any activity regulated by this Ordinance on the reservation of the Little River Band of Ottawa Indians.
- ll. *Minor.* An unemancipated person less than eighteen (18) years of age.
- mm. *Multidisciplinary Team.* A multi-disciplinary team established to involve and coordinate the child protection services of various agencies and to assist in the investigation and prosecution of cases involving sexual or physical abuse of a child.
- nn. *Neglect or Child Neglect.* Child neglect means harm or threatened harm to a child's health or welfare by a parent, legal guardian, or any other person

responsible for the licensing where the parent, guardian, or custodian has not provided adequate food, clothing, shelter, medical care, education, care, or supervision necessary for the child's well-being.

- oo. *Parent(s)*. Any biological parent or parents of an Indian child, or any Indian who has lawfully adopted an Indian child, including adoptions under Tribal law or custom. It does not include a putative father where paternity has not been acknowledged or established under Tribal law, Tribal custom, or under state law.

- pp. *Parental Rights*. Legal rights which include responsibilities, duties and obligations between the parent and the child including, but not limited to:
 - 1. *Care, custody, maintenance and protection*. A parent has the right to lawfully provide for the child's care, custody, and maintenance and protection according to his or her beliefs, customs, and values so long as the child is not placed at risk of physical, emotional, or developmental harm.
 - 2. *Adequate guidance*. There is a presumption that parental guidance and advice is given in good faith and in the best interests of the child.
 - 3. *Right to discipline*. A parent has the right to correct the child by reasonable and timely punishment, including corporal punishment which must be corrective and not punitive.
 - 4. *Control of education*. A parent may educate children as he or she sees fit so long as the child's intellectual development is age appropriate and meets the minimum community standards for academic progress.
 - 5. *Religious training*. The religious training of minor children, or lack of it, is a matter solely within the parent's discretion.
 - 6. The right to a child's services and earnings.
 - 7. The right to direct the child's activities and make decisions regarding the child's care and control, education, health and religion.

- qq. *Permanency Planning Hearing*. A formal court hearing requiring the presence of all parties, attorneys, and caseworkers. This hearing must be held within 12 months after the entry of an order of disposition and every six months thereafter as long as the case remains open. The Court shall review the status of the case and progress being made toward reunification. If the Court determines that the child shall not be returned to the parent(s), the Court shall order permanent placement with a relative, long term or residential care.

- rr. *Presenting Officer.* The attorney who represents the Tribe in all matters related to this Code, including the Indian Child Welfare Act and the Michigan Indian Family Preservation Act, and acts as the prosecutor in the Tribal Court.
- ss. *Protective Services.* Identifiable and specialized child welfare services which seek to intervene in cases where families are observed to have challenges and the home situation presents actual or potential hazards to the physical or emotional well-being of children. Protective services include the investigation and substantiation of reports of actual or suspected child abuse, removal of children from homes and/or environments which present immediate hazards to such children's physical or emotional well-being, and providing or arranging social services to stabilize family life and to preserve the family unit.
- tt. *Protective Services Worker.* Any person employed by the Little River Band of Ottawa Indians Family Services Department or approved by that Department who performs the duties and responsibilities of protective services.
- uu. *Review Hearing.* A formal court hearing requiring the presence of all parties, attorneys and caseworkers. At this hearing, the judge will review the case progress and determine if conditions allow the return of a child in placement. Orders for the continuation or addition of services may be issued by the Court.
- vv. *Sexual Abuse.* Sexual abuse means engaging in sexual contact or sexual penetration with a child as those terms are defined in section 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a or Tribal law.
- ww. *Sexual Exploitation.* Sexual Exploitation includes allowing, permitting, or encouraging a child to engage in prostitution, or allowing, permitting, encouraging, or engaging in the photographing, filming, or depicting of a child engaged in a listed sexual act as defined in section 145c of the Michigan penal code, 1931 PA 328, MCL 750.145c or Tribal law.
- xx. *Termination of Parental Rights Hearing.* A formal hearing requiring all parties, attorneys, and caseworkers. In state court hearings, a qualified expert witness under the Indian Child Welfare Act and the Michigan Indian Family Preservation Act is required. This hearing is held to hear the merits of allegations that parental rights should be terminated. The Court may not terminate parent(s) rights without finding that active remedial efforts were made but were unsuccessful in preventing the breakup of the family and that termination is in the best interests of the child. The Court must also find beyond a reasonable doubt that continued custody of the child by the Indian parent(s) or Custodian(s) is likely to result in serious emotional or physical damage to the child.
- yy. *Tribe.* The Little River Band of Ottawa Indians.

- zz. *Tribal Lands or Tribal Reservation.* Lands owned by the Little River Band of Ottawa Indians or any subdivision of the Tribal government; lands owned by the United States of America in Trust for the Little River Band of Ottawa Indians; and Indian Country of the Little River Band of Ottawa Indians as defined in 18 U.S.C. 1151.
- aaa. *Tribal Court.* The Tribal Court of the Little River Band of Ottawa Indians, also known as the Court, which has jurisdiction and is vested with authority over child custody proceedings.
- bbb. *Ward.* A child who has been adjudicated a child-in-need-of-care, over whom the Tribal Court has jurisdiction. A child-in-need-of-care is a temporary ward of the Court until such time as the case is dismissed and jurisdiction terminates. In cases where parental rights are terminated the child becomes a permanent ward of the Tribal Court until such time as a final decree of adoption is entered as provided in Section 24 or the child reaches the age of majority and is released from the jurisdiction of the court.

Article V. Jurisdiction of the Court.

5.01. *General Powers and Procedures of the Court.*

- a. *General Powers.* All proceedings under this Code shall be deemed civil in nature. In any proceeding under the Children’s Protection Code, either on motion of a party or on the Court’s own motion, the Court may issue all orders necessary to insure the permanency, safety and well-being of children coming within the jurisdiction of the Court. Included within these are the power to issue and enforce subpoenas requiring attendance and testimony of witnesses and production of records, documents or other tangible objects and orders restraining the conduct of any party over whom the Court has obtained jurisdiction.
- b. *Rules of Procedure.* Matters arising under the Children’s Protection Code shall be governed by the rules of procedure for the Tribal Court that are not in conflict with this Code.
- c. *One Judge Philosophy.* Every effort shall be made to assign cases with the same parties to a singular judge. For example, if a neglect or abuse case is on-going and one of the involved parties begins a criminal case, the criminal case should be assigned to the same judge presiding in the neglect and abuse case.
- d. *Cooperation and Grants.* The Court is authorized to cooperate fully with any federal, Tribal, state, or private agency in order to participate in any foster care, shelter care, treatment, or training program(s) and to receive grants-in-aid to carry out the purposes of this Code while this authority is subject to the availability of funds as provided by law.

- e. *Social Services.* The Court shall utilize such services as may be furnished by any Tribal, federal, or state agency provided that it is economically administered without unnecessary duplication and expense.
- f. *Contracts.* The Court may negotiate with Tribal, federal, or state agencies and/or departments on behalf of the Tribal Council for the care and placement of children before the Court subject to the availability of funds.

5.02. *Subject Matter Jurisdiction.* The Court has original jurisdiction of the following proceedings:

- a. Proceedings in which a child is alleged to be a child-in-need-of-care;
- b. Proceedings for the termination of parental rights;
- c. Proceedings for the adoption of a child;
- d. Proceedings to determine custody of, or to appoint a guardian for, a child; and
- e. Proceedings to determine the parentage of a child coming within the jurisdiction of the court.

5.03. *Continuing Jurisdiction of the Court.* Jurisdiction, once exercised by the Court over a proceeding involving a child, is continuing and exclusive unless terminated by the Court in one of the following ways:

- a. The child reaches the age of nineteen (19) years and six (6) months, except during the pendency of delinquency or adoption proceedings in the Court; or
- b. When the Court enters an order terminating its jurisdiction or transferring jurisdiction to another court.

5.04. *Persons Subject to Jurisdiction of the Court.* The Tribe has exclusive jurisdiction over any child custody proceeding involving an Indian Child who resides or is domiciled within the Tribal reservation. The Court may exercise personal jurisdiction over the following categories of persons:

- a. Any child who is an enrolled member of the Tribe or eligible for enrollment who is under the age of eighteen (18) years;
- b. A child who is an enrolled member of the Tribe or eligible for enrollment in the Tribe who is involved in a child custody proceeding or other proceeding involving a child-in-need-of-care, which is transferred to the Tribal Court pursuant to subsection 5.09;

- c. A non-Indian or non-member child domiciled or residing within the Tribal lands of the Little River Band of Ottawa Indians in the home of an enrolled member of either the Little River Band of Ottawa Indians or any other Indian Tribe;
- d. Any person causing a child to come within the jurisdiction of this Code, including parent(s), guardian(s) and custodian(s) of children coming under the jurisdiction of this Court pursuant to paragraph b of this subsection; and
- e. Any person residing on Tribal lands of the Little River Band of Ottawa Indians who is pregnant with a native child and abusing alcohol or controlled substances.

5.05. *Jurisdiction over Extended Family.* The Court shall have jurisdiction over the extended family residing in the household of a child or the child's parent, guardian, and custodian when that Court deems it appropriate.

5.06. *Continuing Jurisdiction.* Once the Court asserts jurisdiction over a person, the Court retains exclusive jurisdiction over that person even if the person leaves the physical boundaries of the reservation.

5.07. *Substantive and Procedural Law Applicable in Court.*

- a. *Tribal Law Controlling.* Because of the vital interest of the Tribe in its children and those children who may become members of the Tribe, this Code, other ordinances, regulations, public policies, recognized customs and common law of the Tribe shall control in any proceeding involving a child who is a member of the Tribe.
- b. *Use of State Substantive and Procedural Law in the Absence of Applicable Tribal Law.* The substantive law and procedures for the state courts shall not be binding upon the Court except where specifically provided for in this Code. In the absence of promulgated rules of procedure, procedural rules of the State of Michigan may be utilized as a guide. Michigan case law may serve as a guide for the Court but shall not be binding. Any matters not covered by the substantive laws, regulations, customs or common law of the Little River Band of Ottawa Indians, or by applicable federal laws or regulations, may be decided by the Court according to the laws of the State of Michigan.

5.08. *Transfer of Jurisdiction to Other Courts.* In any proceedings arising under the Children's Protection Code, the Court may transfer the proceedings to an appropriate state court or other Tribal Court where the state or the other Indian Tribe has a significant interest in the child and the transfer would be in the best interests of the child.

5.09. *Transfer of Jurisdiction from State Courts to Tribal Court In Accordance With the Indian Child Welfare Act and the Michigan Indian Family Preservation Act.*

- a. *Receipt of Notice.* The Tribal Presenting Officer (Tribal Prosecutor) shall be the agent for service of notice of state court child custody proceedings. The Presenting Officer shall provide copies of the notice to the Binojeeuk Commission and the Family Services Department within three (3) days after receipt of certification of eligibility by the Enrollment Department.

- b. *Intervention.* The Presenting Officer shall file a Notice of Intervention with the state court within five (5) days of receipt of notice upon certification by the Little River Band Enrollment office that the child is a member or is eligible for membership in the Little River Band of Ottawa Indians. The Presenting Officer shall provide copies of the Intervention and other pleadings in his possession to the Binojeeuk Commission and the Director of Family Services within three (3) days after filing of said Notice of Intervention.

- c. *Investigation and Pre-transfer Report.* The Tribal Family Services Department shall conduct an investigation in collaboration with the state social services agency and shall file a written report, comporting with tribal regulations, with the Presenting Officer and the Binojeeuk Commission no later than forty-eight (48) hours before the next regularly scheduled Binojeeuk Commission meeting. If an emergency meeting is required, an oral report with appropriate documentation may be submitted. However, the written report shall be filed no later than forty-eight (48) hours after the emergency meeting. Such written report shall include the following:
 1. The best interests of the child;
 2. The best interests of the Tribe;
 3. Availability of services for the child and the family;
 4. Prospects for permanent placement for the child; and
 5. Conservation of Tribal resources.

- d. *Decision to Request Transfer.* The Binojeeuk Commission shall make written recommendations to the Presenting Officer on whether or not the Tribe should petition for transfer from the state court. The Binojeeuk Commission shall consider these factors:
 1. The best interests of the child;
 2. The best interests of the Tribe;
 3. Availability of services for the child and the family;
 4. Prospects for permanent placement for the child; and

5. Conservation of Tribal resources.
- e. *Petition for Transfer.* The Tribal petition for transfer shall be filed in the state court by the Tribal Prosecutor. Where there is concurrent jurisdiction the case shall be transferred unless:
 1. There is good cause to the contrary (see MCL 712B.7 (3));
 2. Either parent objects; or
 3. The Court declines the transfer (see 25 USC 1911(b)).
 - f. *Hearings upon Grant of Transfer Request by State Court.* Upon receipt of transfer jurisdiction from state court, the Tribal Court shall hold appropriate hearings in accordance with this Code.

Article VI. Court Personnel.

6.01. *Counsel for Parent.* A parent may be represented by an attorney at each stage of the proceedings under this Ordinance. It is prudent and advisable for a parent to have representation at every stage of the proceeding. If the Court finds that a parent cannot afford an attorney, the Court shall appoint an attorney. A parent may be responsible for payment of legal services based on his or her income.

6.02. *Guardian Ad Litem.* The Court shall appoint a guardian ad litem for the child.

6.03. *Presenting Officer.* The Tribal Prosecutor shall act as the Presenting Officer, and the terms shall be interchangeable. The Presenting Officer shall represent the Tribe in all proceedings under this Code, the Indian Child Welfare Act, and the Michigan Indian Family Preservation Act. The Presenting Officer may make recommendations to the Binojeeuk Commission and the Tribal Council regarding needed amendments to this Code. The Presenting Officer may make recommendations to the Court regarding needed amendments or revisions to the procedural rules and approved forms utilized by the Tribal Court. The Presenting Officer will be responsible for developing the necessary procedures for carrying out the objects of this Code.

Article VII. Binojeeuk Commission.

7.01. *Creation of the Binojeeuk Commission.* The Binojeeuk Commission is created for the purpose of protecting the best interests of the child and promoting the stability and security of Indian families by fully exercising the Tribe's rights and responsibilities under the Indian Child Welfare Act of 1978, the Michigan Indian Family Preservation Act of 2012, and this Code.

7.02. *Membership.* The Binojeeuk Commission shall consist of five (5) adult members of the Tribe who are age twenty-one (21) or older, appointed by the Tribal Ogema and ratified by the Tribal Council. The term of office for Commission members shall be four (4) years. Commissioners' character shall be in compliance with 25 U.S.C. §3207, which provides that no

individual shall be appointed to a position in which the duties and responsibilities involve regular contact with, or control over, Indian children if such person has been found guilty of or entered a plea of nolo contendere to any felonious offense or any of two or more misdemeanor offenses under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children.

7.03. *Duties.* The Binojeeuk Commission shall act under the authority expressly delegated to it by the Tribal Council, in this Code or in other enactments by the Tribal Council, to protect and improve the welfare of Indian children. The Binojeeuk Commission shall have the following duties:

- a. Advise the Tribal Council and the Tribal Court on child welfare matters and recommend policies and procedures for implementing federal and Tribal child welfare law;
- b. Monitor child welfare proceedings involving Tribal members in the state or Tribal Courts;
- c. Make recommendations regarding intervention in such proceedings and transfer of jurisdiction from state court to the Tribal Court as provided in the Indian Child Welfare Act and the Michigan Indian Family Preservation Act;
- d. Make recommendations to the Tribal Family Services workers, placement agency workers and the Tribal Prosecutor regarding the care, custody and supervision of Tribal children under Court jurisdiction, including recommendations as to case plan, guardianship and termination of parental rights; and
- e. License and monitor group, shelter, foster and adoptive homes and child placing agencies.

7.04. *Voting.*

- a. Actions of the Binojeeuk Commission shall be decided by a consensus of those present at the meeting. The Chair is entitled to vote on all matters before the Commission.
- b. A quorum shall consist of a majority of currently appointed members. Any action by less than a quorum must be ratified by non-attending members before such action shall become official. Ratification may be done by phone, fax or personal contact. All ratifications shall be reduced to writing and placed in the minutes and approved at the next regularly scheduled Commission meeting.

7.05. *Commission Members are not Investigators.* Binojeeuk Commission members shall not initiate their own gathering of information regarding the matter under review. All members shall have access to the same information. If Binojeeuk Commission members are contacted by an interested party, the Commission member shall refer the party to the caseworker, social worker,

client advocate or the Little River Band Family Services office as appropriate. The Commission may request that further information be provided or that further investigation be conducted by the social worker or other appropriate authority to facilitate a timely decision by the Binojeeuk Commission.

7.06. *Conflicts of Interest.* Binojeeuk Commission members who are foster parents or child advocates may participate as a Commission member in the review of children who are in their own care but may not participate in voting or in deliberations before voting. A Binojeeuk Commission member may participate in the discussion but not vote on actions involving the Commission member's extended family.

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

7.08. *Records of Procedures.* Case materials and all other Binojeeuk Commission records shall be kept in a secure area. The Indian Child Welfare Worker shall collect case place packets at the conclusion of Binojeeuk Commission meetings so that no reports leave the meeting and all written reports are maintained in confidence. Written material may be provided to Commission members in advance of the meetings.

Article VIII. Child Protection and Multidisciplinary Teams.

8.01. *Multidisciplinary Team (MDT).* In cases involving allegations that may lead to criminal prosecutions, the Presenting Officer, the Director of Family Services, and the Director of Public Safety shall communicate and decide, under appropriate protocol, whether a case should be handled under civil and/or criminal process, or whether the case should be referred to the United States Attorney for Federal prosecution. The team may elect to include other Tribal staff and representatives from State and federal law enforcement and social agencies on the MDT.

Article IX. Protective Services Workers.

9.01. *Powers and Duties.* Protective services workers shall be employed by or contracted for by the Tribal Family Services Department. Protective services workers shall:

- a. Receive from any source, oral or written, information regarding a child who may be a child-in-need-of-care;
- b. Upon receipt of any report or information under this paragraph (c) of this section, shall initiate a prompt and thorough investigation within twenty-four (24) hours which shall include a determination of the nature, extent and cause of any condition which is contrary to the child's best interests and the name, age and condition of other children in the home; and

- c. In conducting its investigation, the protective service worker shall seek the assistance of and cooperate with law enforcement officials within twenty-four (24) hours after becoming aware that more than one of the following conditions exists:
 - 1. Abuse or neglect is the suspected cause of a child's death;
 - 2. The child is the victim of suspected sexual abuse or sexual exploitation;
 - 3. Abuse or neglect resulting in severe physical, mental or emotional injuries to the child that requires medical treatment or hospitalization. For purposes of this subsection, "severe physical injury" means brain damage, skull or bone fractures, subdural hematoma, dislocations, sprains, internal injuries, poisoning, burns, scalds, severe cuts or any other physical injury that seriously impairs the health or physical well-being of a child;
 - 4. Law enforcement intervention is necessary for the protection of the child, the protective services worker or another person involved in the investigation; or
 - 5. Any alleged perpetrator of the child's injury is not a person responsible for the child's health or welfare.
- d. Take a child into temporary custody if necessary. Law enforcement officials shall cooperate with Family Services personnel to remove a child from the custody of the parents, guardian or custodian when necessary.
- e. After investigation, assess the risk to the remaining children in the home and all other facts or matters found to be pertinent.
- f. Substantiate whether there is probable cause to believe that the child is a child-in-need-of-care.
- g. Offer appropriate services to the family of any child found to be a child-in-need-of-care.
- h. Within thirty (30) days after a referral of a potential child-in-need-of-care, submit a written report of the investigation and evaluation that shall be included in the files maintained by the Tribal Family Services Department and shall include a determination as to whether the report was substantiated or unsubstantiated.
- i. Upon completion of the investigation by the local law enforcement agency or the protective services worker, the law enforcement agency or protective services worker may inform the person who made the report as to the disposition of the report.

- j. Law enforcement officials shall cooperate with the protective services worker and the Tribal Family Services Department in conducting investigations.
- k. If Protective Services receives a report that alleges a pregnant woman abusing alcohol or a controlled substance, protective services shall arrange an appropriate assessment and offer services indicated under the circumstances. Services offered may include but are not limited to a referral for chemical dependency assessment, a referral for chemical dependency treatment and a referral for prenatal care. Protective services may also seek court ordered services. Protective services shall seek court ordered treatment if the pregnant woman refuses recommended voluntary services or fails recommended treatment.

9.02. *Agreements.* The Family Services Department shall cooperate with such state and community agencies as are necessary to achieve the purposes of this Code. The Family Services Department may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification of the Tribal Council.

9.03. *Limitations of Authority; Duty to Inform.* Before offering services to a family, a worker shall inform the family that the worker has no legal authority to compel the family to receive such services. If the family declines the offered services, the worker may request the Presenting officer to initiate a child protection petition in Court alleging that the child is a child-in-need-of-care. Nothing in this section limits the authority of the protective services worker to act in emergency situations to obtain a medical evaluation of the child.

Article X. Indian Child Welfare Caseworker.

10.01. *Responsibilities of the Indian Child Welfare Caseworker.* An Indian Child Welfare Caseworker shall serve as the primary tribal case worker assigned by Family Services Department of the Little River Band of Ottawa Indians to monitor families and children involved with the Tribal or State court systems in civil matters. The responsibilities of the Indian Child Welfare Caseworker shall include the responsibility to:

- a. Ascertain the interests of the child, taking into consideration the child's wishes according to the competence and maturity of the child;
- b. Provide a written report of findings and recommendations to the Binojeeuk Commission prior to each hearing held before the Court;
- c. Make recommendations for the interests of the child in mental health, educational, and other community systems when related to the circumstances causing the child to come within the jurisdiction of the Court;
- d. Inform the Court if the services are not being made available to the child and or family, if the family fails to take advantage of such services or if such services are not achieving their purpose;

- e. Attend training programs as proscribed by Court procedures, the Family Services Director and the Binojeeuk Commission; and
- f. Serve as liaison to agencies of the Tribal or state government on behalf of the child and/or family to access services available.

Article XI. Duty to Report Child Abuse and Neglect.

11.01. *Persons Mandated to Report.* All Little River Band elected officials, physicians, nurses, dentists, optometrists, or other medical or mental health professionals, including community health representatives; volunteers working with families; school principals, school teachers, or other school officials; social workers; child day care center workers or other child care staff; foster care parents; residential care or institutional personnel; peace officers or other law enforcement officials; members of the Binojeeuk Commission; and members of the Multidisciplinary Team who have reasonable cause to suspect that a child may be a child-in-need-of-care have a legal mandate to report. Within forty-eight (48) hours, excluding Saturdays, Sundays, and holidays, after making an oral report, the reporting person shall file a written report.

11.02. *Form of Report.* Those persons mandated to report shall include the following information in the written report, if known:

- a. Names, addresses and Tribal affiliation of the child and the parents, guardian or custodian;
- b. The child's age;
- c. The nature and content of the child's abuse or neglect;
- d. Previous abuse or neglect of the child or siblings;
- e. The name, age and address of the person alleged to be responsible for the child's abuse or neglect; and
- f. The name and address of the person or agency making the report.

11.03. *Immunity from Liability.* Any legally recognized privileged communication except that between attorney and client is abrogated and shall neither constitute grounds for excusing a report otherwise required to be made nor for excluding evidence in a civil child protective proceeding resulting from a report made pursuant to this Code.

11.04. *Penalty for Not Reporting.* Any person mandated to report who knowingly fails to do so or willfully prevents someone else from doing so shall be subject to a charge of civil contempt with a penalty of up to ninety (90) days in jail and/or a fine of up to \$5,000.00.

Article XII. Investigation and Emergency Removal.

12.01. Investigative Orders: Orders for Examination. Upon a showing by a Protective Services Worker or the Presenting Officer of probable cause that a child is a child-in-need-of-care, which may be done ex parte, the Court may order further investigation and discovery including, but not limited to, taking of photographs, gathering physical evidence and examinations or evaluation of a child, parent, guardian or custodian conducted by a physician, dentist, psychologist or psychiatrist.

12.02. Authority to Remove. Upon application by the Presenting Officer or a Protective Service Worker, which may be ex parte, the Court may order the child taken into custody if the Court finds probable cause to believe the minor is a child-in-need-of-care and that the conditions in which the child is found present a substantial risk of harm to the child's life, physical health or mental well-being. The Court may include in such an order:

- a. An authorization to enter specified premises to remove the child; and
- b. A directive to place the child in protective custody pending preliminary hearing.

12.03. Emergency Removal without a Court Order.

- a. A child may be taken into protective custody without a court order by a law enforcement officer or the Tribe's protective services worker if such person has probable cause to believe the child is a child-in-need-of-care; and
 1. Failure to remove the child may result in a substantial risk of death, serious injury or serious emotional harm; or
 2. The parent, guardian or custodian is absent and it appears from the circumstances that the child is unable to receive the basic necessities of life and no satisfactory arrangements have been made by the parent, guardian or custodian to provide for such necessities and no alternative arrangements except removal are available to protect the child.
- b. If grounds for removal are corrected, the child may be returned to the parent by the person originally authorizing removal or by the protective services worker.

12.04. Notice of Removal.

- a. *Notice to the Court.* After a child is removed from the home, the person who removed the child shall contact the presenting officer to permit the filing of the required petition within twenty-four (24) hours, excluding Saturdays, Sundays and legal holidays, after the child is removed from the home. The attempts made to contact the presenting officer shall be documented.
- b. *Notice to the Parent, Guardian or Custodian.* The person removing the child shall make all reasonable efforts to notify the parents, guardian or custodian within twelve (12) hours of the child's removal. Reasonable efforts shall include

personal, telephone and written contacts at their residence, place of employment or other location where the parent, guardian or custodian is known to frequent. If the parent, guardian or custodian cannot be found, notice shall be given to members of the extended family of the parent, guardian or custodian and/or the extended family of the child.

- c. *Notice to Child's Tribe if Different from the Tribe Whose Court is Exercising Jurisdiction.* If the Court asserts jurisdiction over a person who is a member of an Indian Tribe or historic band other than the Little River Band, the Court shall notify the Tribal Court of the non-Tribal member that jurisdiction has been asserted. Such notice shall be made the next business day after filing of the petition.
- d. *Notice of Preliminary Hearing.* The parent, guardian, custodian, and Tribe, if applicable, shall be given notice of the preliminary hearing in the manner specified in Section 14 at the same time as soon as the date and time for such hearing is set.

12.05. Preliminary Hearing Following Emergency Removal. In all cases of emergency removal, a petition must be filed and a preliminary hearing must be held in the Court within forty-eight (48) hours, excluding Saturdays, Sundays, and legal holidays, after a child has been removed from the home unless such hearing is adjourned for good cause, or the child must be released. Such hearings may be held before a judge or magistrate of the Court and must comply with the requirements set forth in Section 16 of this Code.

Article XIII. Filing Child Protection Petition.

13.01. Authorization to File Petition.

- a. Upon the request by a child protective services worker or the Indian Child Welfare worker, the Presenting Officer shall conduct a preliminary inquiry to determine if formal child protection proceedings should be initiated by filing a child protection petition on behalf of the Tribe and in the best interests of the child.
- b. After completion of the preliminary inquiry on a petition, the Presenting Officer shall either authorize the filing of a petition or decline to authorize the filing of a petition.
- c. Only the Presenting Officer may file a petition alleging that a child is in need of care.
- d. Nothing in this section shall preclude law enforcement or protective services personnel from taking emergency actions authorized under Section 12 of this Code.

13.02. *Time Limitations.* If a child has been removed from the home, then a child protection petition shall be filed with the Court within forty-eight (48) hours, excluding Saturdays, Sundays and legal holidays, or the child must be returned to his or her home.

13.03. *Contents of Petition.* The child protection petition shall set forth the following with specificity:

- a. The name, birth date, sex, residence, and Tribal affiliation of the child;
- b. The basis for the Court's jurisdiction;
- c. The specific allegations which cause the child to be a child-in-need-of-care;
- d. A plain and concise statement of the facts upon which the allegations of child-in-need-of-care are based, including the date, time, and location at which the alleged facts occurred;
- e. The names, residence, and Tribal affiliation of the child's parents, guardians, or custodians, if known;
- f. The names, relationships, and residences of all known members of the child's extended family and all former caregivers, if known. If the identity, residence, or location of any parent, guardian, or custodian is unknown, the name, relationship, and address of any known adult relative(s) residing in the same city or county as the child;
- g. If the child is placed outside of the home, where the child is placed, the facts necessitating the placement and the date and time of the placement, unless the Presenting Officer determines that disclosure of the child's location will expose the child to a substantial risk of emotional or physical harm;
- h. The name of the Presenting Officer presenting the petition and the date and time presented;
- i. If any matters required to be set forth by the section are not known, a statement that they are not known should be made; and
- j. The type of relief requested, including whether temporary or permanent custody is sought.

13.04. *Filing and Dismissal of Petition.*

- a. The petition shall be filed with the Clerk of the Court.
- b. A petition alleging that a child is in need of care or supervision shall be dismissed with prejudice if a preliminary hearing is not held within:

1. Seventy-two (72) hours, excluding Saturdays, Sundays and legal holidays, from the date of the petition is filed when a child is taken into custody; or
 2. Twenty (20) days from the date the petition is filed when a child is not in custody or has been released to his or her parent, custodian or guardian.
- c. Notwithstanding the time limitations specified in paragraph (b), above, the time for holding the preliminary hearing may be continued upon motion of the Presenting Officer if the custodial parent, guardian or custodian or other material evidence and/or witnesses are unavailable. The motion must include information regarding the nature of the material evidence presently unavailable and/or the names and addresses of unavailable persons or other witnesses. A continuance will be granted only upon a showing by the Presenting Officer that he or she has exercised due diligence in his or her attempt to secure the evidence and/or attendance of witnesses. If a proper showing of due diligence is not made, and the preliminary hearing is not held within the time period required in paragraph (b), the petition must be dismissed with prejudice, unless the parties have agreed to an Informal Adjustment Conference. If a continuance is granted, the preliminary hearing must be held within ten (10) days from the date the petition was filed, if the child was taken into custody, or within twenty (20) days, if a child is not in custody.

13.05. Informal Adjustment Conference.

- a. If, after the filing of a petition and prior to adjudication, the parties may agree to informal adjustment provided for in Section 13 of this Code. During informal adjustment, the petition is held in abeyance and formal proceedings adjourned until the informal adjustment proceedings conclude or the petition is dismissed.
- b. The Court may hold an informal hearing conference with the minor and the minor's parent, guardian, or custodian, the Family Services Department, and the Presenting Officer to discuss alternatives to the filing of a petition if:
 1. The admitted facts bring the case within the jurisdiction of the Court;
 2. An informal adjustment of the matter would be in the best interests of the minor and the Tribe; and
 3. The minor and his or her parent, guardian, or custodian, the Family Services Department, and the Presenting Officer consent to an informal adjustment with knowledge that the consent is voluntary.
- c. This subsection does not authorize the Court to compel any involuntary action of the parties involved.
- d. At the informal conference, the Family Services Department or the Presenting Officer may recommend that the Court:

1. Refer the minor and the parent, guardian, or custodian to a community agency for needed assistance;
 2. Order terms of supervision; and
 3. Order compliance with the voluntary service plan.
- e. The Court shall set forth in writing the conclusions reached at the informal conference and the disposition agreed to by parties for remedying the situation and such report shall be made available to the Court, parents, guardian, guardian ad litem, custodian, the child advocate, Family Services Department, and Presenting Officer.
 - f. Any informal adjustment period shall not exceed six (6) months.
 - g. The Family Services Department shall review the minor's progress every thirty (30) days. If at any time after the initial thirty (30) day period, the Family Services Department concludes that positive results are not being achieved, the Family Services Department shall recommend that the Presenting Officer file a petition pursuant to this Code.
 - h. No statement made during the informal hearing may be admitted as evidence at an adjudicatory hearing or any proceedings against the minor under this Code.

Article XIV. Notice and Service of Summons.

14.01. General. Unless a party must be summoned as provided in subsection 14.02, a party may be given notice of a proceeding in the Court in any manner authorized by this Code.

14.02. Summons. Except as otherwise provided in this Code, the Court shall direct the service of a summons in all proceedings. The summons shall be issued and served on the parent or person with whom the child resides, if other than a court ordered custodian, directing such person to appear for trial or other proceeding. If the person notified is not a parent, the parent(s) shall be notified by service as provided in subsection 14.04. The Court may direct that the child's appearance in court is necessary.

14.03. Contents. The summons shall direct the person to whom it is addressed to appear with the child, unless the child's appearance has been excused, at a time and place specified by the Court and must:

- a. Identify the nature of the proceeding;
- b. Include a prominent notice that the proceedings could result in termination of parental rights;
- c. Have a copy of the petition attached to the summons; and

- d. Explain that the person has a right to an attorney at his or her own expense and a right to a trial.

14.04. Notice of Hearing.

- a. *Persons entitled to notice.* The Court shall insure that the following persons are notified of each hearing:
 - 1. The parent(s);
 - 2. The attorney for the parent(s);
 - 3. The child or the advocate for the child;
 - 4. The legal guardian or custodian other than the parent(s), if any;
 - 5. The petitioner;
 - 6. The responsible child placing agency, if different from the petitioner;
 - 7. The guardian ad litem of a party appointed;
 - 8. The child's Tribe, if different from the petitioner; and
 - 9. Any other person the court may direct to be notified.
- b. *General.* Notice of hearing must be given in writing or in court on the record at least fourteen (14) days prior to the hearing except as provided in subsections (c) and (d), or as otherwise provided in this Code.
- c. *Preliminary Hearing; Emergency Removal.* When a child is removed from the home, reasonable efforts shall be made to notify the parents of the child or extended family of the preliminary hearing following emergency removal as soon as the hearing is scheduled and the notice may be in person, in writing, or by telephone.
- d. *Permanency Planning Hearing; Termination proceedings.* Notice of a permanency planning hearing or a hearing on a petition to terminate parental rights must be given in writing or on the record at least thirty (30) days before the hearing.
- e. When a party fails to appear in response to a notice of hearing, the Court may order the party's appearance by summons or subpoena.

Article XV. Placement of Children.

15.01. Restrictions. A child alleged to be a child-in-need-of-care shall not be placed in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile offenders.

15.02. Placement Priorities. A child may be placed in the following community based shelter-care facilities listed in order of preference:

- a. Members of the child's immediate family;
- b. Members of the child's extended family, who are members of the Little River Band of Ottawa, Grand River Bands of Ottawa, or other Michigan Ottawa, Chippewa or Potawatomi Tribe;
- c. Other members of the child's extended family;
- d. An Indian family of the Little River Band of Ottawa Indians which is licensed by the State or a Tribe as a foster care home or an Indian family otherwise authorized by law to provide care for the child;
- e. A facility operated by a licensed Indian child welfare services agency; or
- f. Any other suitable placement that meets the standards for shelter care facilities established by the Tribal government.

15.03. Perpetrator in the Child's Home. If the alleged perpetrator is known and the perpetrator resides in the home of the victim(s), the Court may order such perpetrator be removed from the home and the child may remain under the care and supervision of the Family Services Department.

15.04. Least Restrictive Setting. If a child cannot be returned to the parents, the child shall be placed in the least restrictive setting which most approximates a family and in which the special needs, if any, may be met. Consistent with the placement priorities described above, efforts shall be made to place the child in a home or facility in reasonable proximity to his or her home, taking into account any special needs of the child.

Article XVI. Preliminary Hearing.

16.01. Time Period within Which Preliminary Hearing Must be Held.

- a. *Child Released to Parent, Guardian or Custodian; Hearing Date.* If the child was not removed from the home or has been released to the parent(s), guardian, or custodian, the Court shall conduct a preliminary hearing within twenty (20) days after filing of the petition.
- b. *Child Taken Into Custody for Out-of-home Placement; Hearing Date.* If the child is taken into custody and placed in out of home placement, the Court shall

conduct a preliminary hearing within seventy-two (72) hours after filing the petition, excluding Saturdays, Sundays, and legal holidays.

- c. *Preliminary Hearing Adjourned During Informal Adjustment.* If, after the filing of a petition, the parties, including the Family Services Department, the Presenting Officer, and the Court, agree to informal adjustment provided for in Section 13 of this Code, the petition may be held in abeyance and the preliminary hearing adjourned until the informal adjustment proceedings conclude or the petition is dismissed.

16.02. Preliminary Hearing Procedures.

- a. *Purpose.* At the Preliminary Hearing, the Court must determine whether:
 - 1. The parent(s), guardian, or custodian of the child have been notified of the hearing;
 - 2. Probable cause exists to believe the child is a child-in-need-of-care; and
 - 3. The home conditions continue to present a substantial risk of harm to the child's life, physical health, emotional health, or mental well-being and whether any alternative except removal of the child is reasonably available to adequately safeguard the child from such risk.
- b. *If Parent, Guardian or Custodian is not present.* The Court shall determine if the child's parent, guardian or custodian has been notified of the hearing in accordance with Section 14 of this Code and, if the parent is not present, the Court shall make an inquiry into what efforts have been made to notify and to obtain the presence of the parent, guardian, or custodian. If it appears that further efforts are likely to produce the child's parent, guardian, or custodian, the Court shall recess for not more than seventy-two (72) hours, excluding Saturdays, Sundays, and legal holidays, and direct the petitioner to make continued efforts to obtain the presence of the child's parent, guardian, or custodian. The preliminary hearing may be conducted in the parent's absence.
- c. *Parents' Advised of Allegations and Procedural Rights.* The Court shall read the allegations in the petition in open court, unless waived, and shall advise the parent of the right to have counsel represent them at their own expense and their right to a trial on the allegations in the petition. After advising the parent of the right to remain silent, the Court shall allow a statement of explanation.
- d. *Court Testimony.* The Court shall hear testimony concerning:
 - 1. The circumstances that gave rise to the petition; and
 - 2. The need for continued placement.

- e. *Plea of Admission or No Contest.* A respondent may make a plea of admission or of no contest to the allegations contained in the petition, including an amended petition, which would establish that the child is a child-in-need-of-care. The plea may be taken at any time after the filing of the petition provided that the petitioner and guardian ad litem or special advocate for the child have been notified of a plea offer and have been given the opportunity to object before the plea is accepted. The court shall not accept a plea of admission or no contest until it satisfies itself that the allegations contained in the petition are supported and that the plea is knowingly, understandingly, and voluntarily made. Following acceptance and entry of a plea of admission or no contest, the Court may follow the procedures defined in paragraph (f) (2) of this subsection and may schedule a disposition hearing in accordance with Section 18 of this Code. Before accepting a plea of admission or plea of no contest, the court must advise the respondent on the record or in writing that the following is made a part of the record:
1. The allegations in the petition;
 2. The right to an attorney at the respondent's expense;
 3. That if the court accepts the plea, the respondent will give up rights to: a trial by judge, to have the petitioner prove the truth of allegations by a preponderance of the evidence, to have witnesses against him or her appear and testify under oath, to cross-examine witnesses against him or her, and have witnesses which might support his or her defense be subpoenaed to testify in court; and
 4. The consequences of the plea including that the plea could later be used to terminate his or her parental rights.
- f. At the Preliminary Hearing, the Court shall decide whether to authorize the filing of the petition.
1. *No Probable Cause.* If, at the end of the preliminary hearing, probable cause to believe the child is a child-in-need-of-care is not found, the petition shall be dismissed and the child shall be released.
 2. *Probable Cause.* If the Court finds that probable cause exists to believe the child is a child-in-need-of-care the Court:
 - (i) Shall order the parent, guardian or custodian to appear at an adjudication hearing on a date and time set by the Court;
 - (ii) May release the child to the custody of either of the child's parents, guardian or custodian under such reasonable terms and conditions as are necessary for either the physical, emotional, or mental well-being of the child; or

- (iii) May order placement of the child with someone other than a parent, guardian or custodian if the Court, after hearing, determines that both of the following conditions exist:
 - (A) Custody of the child with a parent, guardian or custodian presents a substantial risk of harm to the child's life, physical health, emotional or mental well-being and no provision of services or other arrangement except removal of the child is reasonably available to adequately safeguard the child from such risk; and
 - (B) Conditions of custody of the child away from a parent, guardian or custodian are adequate to safeguard the child's health and welfare.

- g. *Physical, Mental or Psychological Exam.* The Court may at any time after conducting a preliminary hearing at which probable cause to proceed upon a petition is found, order any involved child, parent or guardian to undergo a physical, mental or psychological examination by a qualified professional.

Article XVII. Adjudication Hearing.

17.01. Hearing. The Adjudication Hearing shall commence as soon as possible but not later than forty-five (45) days after the preliminary hearing.

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

- a. Upon stipulation of the parties;
- b. Where process cannot be completed;
- c. The Court finds that the testimony of a presently unavailable witness is needed;
- d. One time only for up to fourteen (14) days at a parent's request for parents to obtain counsel;
- e. *Adjudication Hearing Adjourned During Informal Adjustment.* If, after the filing of a petition, the parties, including the Family Services Department, the Presenting Officer, and the Court, agree to informal adjustment provided for in Section 13 of this Code, the proceedings on the petition may be held in abeyance and the adjudication hearing adjourned until the informal adjustment proceedings conclude or the petition is dismissed.
- f. For other good cause shown.

17.03. *Hearings Closed to the Public.* The general public shall be excluded from the proceedings and only the parties, their counsel, witnesses, the child advocate, and other persons determined necessary or useful to the proceedings by the Court shall be admitted.

17.04. *Evidence.* The formal rules of evidence shall not apply at these proceedings. All relevant and material evidence which is reliable and trustworthy may be admitted at the trial and may be relied upon by the Court to the extent of its probative value. The parties shall be afforded an opportunity to examine and controvert written reports received by the Court and shall be allowed to cross-examine individuals who made the reports when those individuals are reasonably available. The Court may rely upon conference telephone or other electronic devices that permit all those appearing or participating to hear and speak to each other.

17.05. *Allegations Sustained.* If the allegations of the petition are sustained by clear and convincing evidence, the Court shall find the child to be a child-in-need-of-care and schedule a Disposition Hearing in accordance with Section 18 of this Code. The Court may also enter orders of further discovery, evaluation and assessment and other orders to protect the child.

17.06. *Allegations not Sustained.* If the allegations of the petition are not sustained, the Court shall dismiss the matter and release the minor.

Article XVIII. Disposition Hearing.

18.01. *Date.* The Disposition Hearing may be held immediately after the Adjudication Hearing. The time period, if any, between the Adjudication Hearing and the Disposition Hearing is within the discretion of the Court. When the child is in placement, the time period may not be more than thirty-five (35) days except for good cause. If the Disposition Hearing is not held immediately after the Adjudication Hearing, notice of hearing may be given by scheduling it on the record in the presence of the parties and in accordance with Notice and Service of Summons.

18.02. *Proposed Case Plan.*

- a. The Family Services 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 and/or the minor's parent(s), guardian, or custodian designed to resolve the problems presented in the petition.
- b. The report shall contain a detailed explanation of the necessity for the proposed disposition plan and its benefits to the minor.
- c. If the report recommends placement of the child somewhere other than with the child's parent(s), guardian, or custodian, it shall state the specific reasons underlying its placement recommendation, including any reason(s) for deviating from the placement priorities defined in Section 15 of this Code.

- d. The Family Services Department shall present the case plan to the Binojeeuk Commission for its adoption, modification, or rejection at a scheduled Commission meeting prior to the dispositional hearing. Case plan material shall be delivered to the Binojeeuk Commissioners five (5) days prior to the Binojeeuk Commission meeting.

18.03. Evidence. All relevant and material evidence, including oral and written reports may be received and may be relied on to the extent of its probative value, even though such evidence may not be admissible at trial. The Court shall consider the case service plan and any report by any agency responsible for the care and supervision of the child concerning efforts to provide remedial services and rehabilitation programs to prevent removal or to rectify conditions that caused removal of this minor from the home. The parties shall be given an opportunity to examine and controvert written reports so received and may be allowed to cross-examine individuals making reports when such individuals are reasonably available. No assertion of an evidentiary privilege other than the privilege between attorney and client shall prevent the receipt and use at the Disposition phase of materials prepared pursuant to a court ordered examination, interview or course of treatment.

18.04. Disposition Orders.

- a. The Court shall enter an order of disposition after considering the case service plan and other evidence offered at Disposition. The Court shall approve a case service plan and may enter such orders as it considers necessary in the interest of the child. The order of disposition shall state whether active efforts have been made to prevent the child's removal from the home or to rectify the conditions that caused the child's removal from the home.
- b. If a child has been found to be a child-in-need-of-care, the Court may make the following dispositions, consistent with the placement preferences described in Section 15:
 - 1. Permit the child to remain with the parent(s), guardian or custodian, subject to such conditions as the Court may prescribe;
 - 2. Place the child with a relative subject to such conditions as the Court may prescribe;
 - 3. Place the child in a licensed foster home subject to such conditions as the Court may prescribe;
 - 4. Place the child in group home or residential care facility designated by the Court; and
 - 5. Direct the presenting officer to file a petition to terminate parental rights under this Code.

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

Article XIX. Disposition Review Hearing.

19.01. Review. The Disposition Order shall be reviewed by the court no later than one hundred eighty-two (182) days after the child's removal from the home and no later than every ninety-one (91) days after that for the first year the child is subject to the court's jurisdiction. After the first year that the child has been removed from the home and is subject to the court's jurisdiction, the court must conduct review hearings no later than one hundred eighty-two (182) days from the immediately preceding review hearing conducted during the first year and every one hundred eight-two (182) days thereafter until the case is dismissed. A review hearing must not be cancelled or delayed beyond the number of days set out above, regardless of whether a petition to terminate parental rights or another matter is pending.

19.02. Notice. Notice of the review hearing shall be provided on the record and by ordinary mail as provided in this Code.

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

- a. *Services.* Services provided or offered to the child and the parent(s), guardian or custodian and whether the parent(s), guardian or custodian has complied with and benefited from those services; and
- b. *Visitation with the child.* If visitation did not occur or was infrequent, the Court shall determine why visitation did not occur or was infrequent.

19.04. Action Following Review. After review of the case service plan, the Court shall determine the extent of progress made toward alleviating or mitigating the conditions that caused the child to become and to remain a child-in-need-of-care. The Court may modify any part of the case plan including but not limited to the following:

- a. Prescribing additional services that are necessary to rectify the conditions that caused the child to become or to remain a child-in-need-of-care;
- b. Prescribing additional actions to be taken by the parent(s), guardian or custodian to rectify the conditions that caused the child to become or remain a child-in-need-of-care; and
- c. Issue an order permitting the agency to return the child to the home if no fewer than seven (7) days' notice of the intent to return the child to the home is given to all parties and no party requests a hearing within the seven (7) days.

19.05. Continuing Placement/Additional Review. At a review hearing, the Court shall determine the continuing necessity and appropriateness of the child's placement and shall order

the return of the child to the custody of the parent(s), continue the disposition order, modify the disposition order or enter a new disposition order. At the initial disposition hearing and every review hearing thereafter, the Court shall determine whether it will accelerate the date for the next scheduled review hearing required under this section. In making this determination, the Court shall consider, but not be limited to, all of the following:

- a. The parent's ability and motivation to make necessary changes to provide a suitable environment for the child;
- b. Whether there is a reasonable likelihood that the child may be returned to the home prior to the next review hearing required by this section; and
- c. Whether a placement which better meets the placement priorities described in Section 15 of this Code is available and in the best interests of the child.

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

Article XX. Permanency Planning Hearing.

20.01. Hearing. If a child remains adjudicated a child-in-need-of-care and parental rights to the child have not been terminated, the Court shall conduct a permanency planning hearing not more than twelve (12) months after entry of the order of disposition and every twelve (12) months thereafter, so long as the child remains a child-in-need-of-care. A permanency planning hearing may be combined with a disposition hearing under this Code.

20.02. Review the Status. A permanency planning hearing shall be conducted to review the status of the child and the progress being made toward reunification. If the Court determines that the child shall not be returned to the parent(s), the Court shall order permanent placement with a relative, long term foster care, or residential care.

20.03. Return the Child Home. If parental rights to the child have not been terminated and the Court determines at a permanency planning hearing that the return of the child would not cause a substantial risk of harm to the child's life, physical health, or mental well-being, the Court shall order the child returned to the parent(s). In determining whether the return of the child would cause a substantial risk of harm to the child, the Court shall view the failure of the parent(s) to substantially comply with the terms and conditions of the case service plan and disposition orders of the Court as evidence that return of the child to the parent(s) would cause a substantial risk of harm to the child's life, physical health or mental well-being.

20.04. Child not Returned Home; Alternative Permanent Placement Plans. If the Court determines at a permanency planning hearing that the child should not be returned to the parent(s), the Family Services Department shall propose, with the recommendation of the Binojeeuk Commission, one of the following alternative permanent placement plans consistent with the placement preferences and in the least restrictive setting, as defined in Section 15 of this Code.

20.05. Court Orders. If the Court determines that the child should not be returned to the parent(s), the Court shall order permanent placement with a relative, long term foster care, or residential care.

Article XXI. Termination of Parental Rights.

21.01. Grounds for Involuntary Termination. The Court may terminate the parental rights of a parent to a child adjudicated a child-in-need-of-care if the Court finds by evidence beyond a reasonable doubt that remedial services, rehabilitative programs and active efforts have been provided to prevent the breakup of the Indian family and that despite such efforts the following exist:

- a. The Court must find beyond a reasonable doubt that continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child and that it is in the best interests of the child to terminate the rights of the parent; and
- b. On or more of the following conditions exist:
 - 1. The child has been abandoned by his or her parent(s);
 - 2. The child or a sibling of the child has suffered physical injury or physical or sexual abuse under either of the following circumstances:
 - i. A parent’s act caused the physical injury or physical or sexual abuse and the Court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent’s home; or
 - ii. A parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the Court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent’s home.
 - 3. The parent was a respondent in a proceeding brought under this Children’s Protection Code, twelve (12) or more months have elapsed since the issuance of an initial disposition order and the Court by evidence beyond a reasonable doubt finds either of the following;
 - i. The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child; or
 - ii. Other conditions exist that cause the child to be a child-in-need-of-care. The parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and have been given a

reasonable opportunity to rectify the conditions and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child.

4. The parent without regard to intent fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child;
5. The parent of the child is convicted of a felony of a nature as to prove the unfitness of the parent to have future custody of the child or if the parent is imprisoned over two (2) years and the parent has not provided for the child's proper care and custody and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child; or
6. The parent's parental rights to one (1) or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

21.02. Termination at Initial Disposition. If a petition to terminate parental rights to a child is filed, the Court may enter an order terminating parental rights at the initial disposition hearing; however, the Court may not enter an order terminating parental rights at the initial disposition hearing if the parents(s) have not been afforded at least thirty (30) days' notice before such hearing as provided in Section 14.

21.03. Quality of Evidence. The same rules of evidence that apply at adjudication shall apply in termination of parental rights proceedings.

21.04. Order. An order terminating parental rights under this Code may not be entered unless the Court makes findings of fact, states its conclusions of law and includes that statutory basis for the order. The Court may state the findings and conclusions on the record and, in all cases, shall include them in a written opinion. If the Court does not issue a decision on the record following the hearing, it shall file its decision within twenty-eight (28) days after the taking of final reports.

21.05. Voluntary Relinquishment of Parental Rights. Parental rights may be voluntarily terminated by a parent in writing, if signed by the parent in the presence of and with the approval of the Court. Any consent given prior to, or within ten (10) days after, the birth of the child shall not be valid. The Court shall ensure that the parent understands the consequences of the voluntary termination prior to approving it. A parent who wishes to relinquish parental rights shall be provided an interpreter if the parent does not understand English. Consent may be withdrawn prior to the entry of the final order.

21.06. *Child's Continued Right to Benefits.* An order terminating the parent-child relationship shall not entitle a child to any benefit due the child from any third person, agencies, state, or the United States or shall any action under this Code be deemed to affect any rights and benefits that the child derives from the child's descent from a member of a federally recognized Tribe.

21.07. *Advise of Right to Appeal.* Immediately upon entry of an order terminating parental rights, the Court shall advise the respondent parent orally or in writing that the parent is entitled to appellate review of the order. Appellate review shall be by right. The clearly erroneous standard shall be used in reviewing the findings of the Court on appeal from an order terminating parental rights.

21.08. *Post Termination Review Hearing.* If a child remains a ward of the Court following the termination of parental rights to the child, the Court shall conduct a review hearing at least every six (6) months to review the progress toward permanent placement of the child. The Court shall make findings on whether active efforts have been made to establish permanent placement for the child and may enter such orders as it considers necessary in the best interests of the child.

Article XXII. Child Protection Records.

22.01. *Court Records.* A record of all hearings under this Code shall be made and preserved. All Court records shall be confidential and shall not be open to inspection to any but the following:

- a. The child;
- b. The child's parent(s), guardian, or custodian;
- c. The prospective adoptive parent(s);
- d. The child's counsel or court appointed special advocate;
- e. The Binojeeuk Commission;
- f. The Presenting Officer; and
- g. Any other person by order of the Court having legitimate interest in the particular case or the work of the Court.

22.02. *Law Enforcement and Social Services Records.* Law enforcement records and files concerning a child shall be kept separate from the records and files of adults. All law enforcement and family service records shall be confidential and shall not be open to inspection to any but the following:

- a. The child;
- b. The child's parent(s), guardian or custodian;

- c. The child’s counsel or court appointed special advocate;
- d. Law enforcement personnel;
- e. The Binojeeuk Commission;
- f. The Presenting Officer; and
- g. Any other person by order of the Court having legitimate interest in the particular case or the work of the Court.

Article XXII. Delegations of Parental Authority/Guardianship.

23.01. Power of Attorney. A parent(s), guardian or custodian may delegate to another person, the powers of a parent regarding the care, custody and property of a minor child. Such powers include but are not limited to the following: the consent of admission to a hospital or school, consent to routine dental care, non-surgical medical care and emergency dental, medical or surgical care. The delegation shall be valid for a period not to exceed six (6) months from the date of execution and may be revoked in writing at any time by the person or agency delegating the power. The delegation of power does not include the power to consent to marriage or adoption of a child and the power to release a child for adoption.

23.02. Types of Guardianship.

- a. *Temporary Guardianship.* The Court may appoint a temporary guardian under such terms and conditions as the Court sets forth in the written order. A temporary guardianship may be terminated if the Court determines that it is in the best interests of the child to change custody from temporary guardian to a new guardian or to return the child to the parent, guardian or custodian. A temporary guardianship shall be established by parental consent only and shall be revocable by the Court upon parental request. The parent and the child’s extended family shall be granted liberal visitation rights unless deemed inappropriate by the Court.
- b. *Full Guardianship.* The Court, when it appears necessary or convenient, may appoint guardians for the persons under the Court’s jurisdiction. Unless otherwise specified by the Court, a guardian appointed shall be responsible for the care, custody and education of the child until the child reaches the age of eighteen (18) years, dies, is emancipated by the Court, or until the guardian is legally discharged. Unless the Court appoints a separate individual as guardian of property the guardian of person shall also be the guardian of the child’s property.

23.03. Grounds. The Court may appoint a guardian for a child if either of the following circumstances exists:

- a. The parental rights of both parents or of the surviving parent have been terminated or suspended by prior court order, by judgment of divorce or separate

maintenance, by death, by judicial determination of mental incompetence, by disappearance or by confinement in a place of detention; or

- b. The appointment is necessary for the immediate physical well-being of the minor.

23.04. *Who May File.* Any person interested in the welfare of the child may file a petition for guardianship. The petition may be initiated either by the proposed guardian or by the child if the child is at least fourteen (14) years of age.

23.05. *Notice of Guardianship Proceedings.* Before appointing a guardian, the Court must give reasonable notice to any person having the care of the child, to the child and to other relatives of the child as the Court may deem proper.

23.06. *Contents of Guardianship Petition.* All petitions for guardianship shall be written and dated by the petitioners and must be notarized or witnessed by a clerk of the Court. The petition shall include the following, to the best information and belief of the petitioner:

- a. The full name, sex, date and place of birth, residence, and Tribal affiliation of the proposed ward;
- b. The full name, address, Tribal affiliation, relationship if any to the minor, and interest in the proceeding of the petitioner;
- c. The names and addresses of the minor's parent(s), if living, and of other persons known to have an interest in the petition for appointment of guardian;
- d. The name and date of death of the minor's parent(s), if deceased;
- e. The basis for the Court's jurisdiction;
- f. The name and address of the person or agency having legal or temporary custody of the proposed ward;
- g. A statement of the reason or reasons that the appointment of a guardian is sought, whether the petitioner seeks the appointment of a guardian of the person, a guardian of the estate, or both, and whom the petitioner recommends or seeks to have appointed as such guardian or guardians; and
- h. A full description and statement of value of the minor's assets and liabilities with an estimate of the value of any property owned, possessed, or in which the proposed ward has an interest, including any income and receivables to which the proposed ward is entitled.

23.07. *Guardianship Report.* Upon the filing of a guardianship petition, the Court shall immediately request that the Family Services Department or other qualified agency conduct a guardianship report on the proposed guardian and report on the proposed ward. The guardianship report shall contain all pertinent information necessary to assist the Court in determining the best

interests of the proposed ward. No determination can be made on a petition for guardianship until the report has been completed and submitted to and considered by the Court. The guardianship report shall be submitted to the Court no later than ten (10) days before the hearing. The Court may order additional reports as it deems necessary.

23.08. Powers and Duties. To the extent that it is not inconsistent with the terms of any order of the Court, a guardian of the person has the following powers and duties:

- a. The guardian of the person is entitled to custody of the person of the ward and shall make provisions for the ward’s care, comfort, and maintenance and shall as appropriate to the ward’s needs, arrange for the training, education, employment, rehabilitation, or habitation. The guardian of the person shall take reasonable care of the ward’s clothing, furniture, vehicles, and other personal effects that are with the ward;

- b. In arranging for a domicile other than in the home of the guardian, the guardian of the person shall give preference to places within the Tribal reservation over places not in the reservation, if both in-reservation and out-of-reservation places are substantially equivalent. The guardian also shall give preference to places that are not treatment facilities. If the only available and appropriate places of domicile are treatment facilities, the guardian shall give preference to Tribal-based treatment facilities, such as group homes, over treatment facilities that are not Tribal-based; and

- c. The guardian of the person shall have authority to consent to any medical, legal, psychological, or other professional care, counsel, treatment, or service for the person. The guardian of the person may give any other consent or approval on the ward’s behalf that may be required or in the ward’s best interest. The guardian of the person may petition the Court for concurrence in the consent or approval.

23.09. Reimbursement of Guardian. A guardian of the person is entitled to be reimbursed out of the ward’s estate for reasonable and proper expenditures incurred in the performance of the duties as guardian of the ward’s person. The Court may order monthly reimbursement payments to the person or agency to whom custody is granted under this Code, provided sufficient funds have been appropriated by the Tribal Council. Such payments must be used by the person or agency with custody of the child for the sole purpose of covering expenses incurred in the care and custody of said child and shall not be used for any other purpose. The use of such payments for any purpose other than that described in this Code shall subject the guardian to contempt of court and any criminal and civil penalties or remedies provided by the Tribal Code.

23.10. Limitation of Guardian’s Liability. A guardian of the person, if the guardian has acted within the limits imposed by this Code or the order of appointment or both, shall not be liable for damages to the ward or the ward’s estate, merely by reason of the guardian’s:

- a. Authorizing or giving consent or approval necessary to enable the ward to receive legal, psychological or other professional care, counsel, treatment or service in a

situation where the damages result from the negligence, or other acts of a third person; or

- b. Authorizing medical treatment or surgery for the ward, if the guardian acted in good faith and was not negligent.

23.11. Guardianship of Property.

- a. The Court may appoint a guardian for the property of a ward under such terms and conditions as the Court sets forth in the written order. The guardianship may cover all property or it may be limited to only specific property or a specific legal action as set forth in the written order. A limited guardianship of the person may also include guardianship of the ward's property if set forth in the written order.
- b. *Duties.* A guardian of property shall not have authority over the person but shall be responsible for acting in a reasonable and prudent manner to collect, preserve, manage, and use of the child's estate to accomplish the desired result of administering the child's property legally and in the child's best interest, including but not limited to the following specific powers:
 - 1. To take possession, for the child's use, of all the child's estate;
 - 2. To receive assets due the child from any source;
 - 3. To maintain any appropriate action or proceeding, including to obtain support to which the child is legally entitled, to recover possession of any of the child's property, to determine the title or to recover damages for any injury done to any of the child's property, and to compromise, adjust, arbitrate, sue or defend, abandon or otherwise deal with and settle any other claims in favor or against the child;
 - 4. To pay taxes, assessments and other expenses incident to the collection, care, administration, and protection of the child's estate;
 - 5. To expend estate income on the child's behalf and to petition the Court for prior approval of expenditures from estate principal, provided neither the existence of the estate or guardian's authority to make expenditures shall be construed as affecting the legal duty that a parent or other person may have to support and provide for the child; and
 - 6. To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the guardian shall deem advisable, including the power of a corporate guardian to borrow from its own banking department, for the purpose of paying debts, taxes and other claims against the child, and to mortgage, pledge or otherwise encumber such portion of the child's estate as may be required to secure such loan(s).

23.12. Annual Reports and Review Hearings. All guardians, including limited guardians and guardians of property, shall file annual reports with the Court providing an update on the condition of the ward and, if applicable, an accounting of funds collected and funds expended on behalf of the ward. Notice of the availability of such report shall be provided to interested parties and the report shall be available for review by interested parties. A review hearing shall be scheduled in conjunction with the filing of annual reports filed by any guardians upon the Court's motion or at the request of any interested party.

23.13. Resignation. Any guardian who wishes to resign may apply in writing to the Court, setting forth the circumstances of the case. If a guardian of the estate or a guardian both of the estate and of the person, at the time of making the application, also exhibits the final account for settlement and if the Court is satisfied that the guardian has full accounted, the Court may accept the resignation of the guardian and discharge the guardian and appoint a successor guardian but the guardian so discharged and the sureties are still liable in relation to all matters connected with the guardianship before discharge. A guardian of both the estate and of the person who wishes to resign as guardian of the estate of the ward but continue as guardian of the person of the ward may apply for the partial resignation as provided in this Code.

23.14. Appointment of Successor Guardian. Upon the removal, death, or resignation of a guardian, the Court shall appoint a successor guardian following the same criteria that would apply to the initial appointment of a guardian.

23.15. Fiduciary Duty. All persons acting under a power of attorney, limited guardianship, guardianship, or guardian of property and any person or agency appointed to act on behalf of a minor under this Code acts in a fiduciary capacity. As a fiduciary, one owes a duty to act in the best interests of the minor, exercising sound judgment, and avoiding conflicts of interest. Any person acting as a fiduciary that breaches his or her fiduciary duties will be liable for any damages resulting from such breach.

Article XXIV. Adoption.

24.01. Jurisdiction. The Court shall have jurisdiction over adoptions where:

- a. The person to be adopted is a Tribal member of the Little River Band of Ottawa Indians; or
- b. The person to be adopted is eligible for enrollment in the Little River Band of Ottawa Indians.

24.02. Interested Parties in Adoption Proceedings. The following parties have an interest in adoption proceedings involving children who are enrolled members of the Little River Band or who are eligible for enrollment in the Tribe:

- a. The petitioner;
- b. The Tribe, acting through the Binojeeuk Commission or Family Services Department;

- c. The adoptee if he or she is over fourteen (14) years of age;
- d. The minor parent, adult parent, or surviving parent of a minor adoptee; however, such parent(s) shall not have the ability to nominate the petitioner or to refuse to consent to an adoption if the rights of such parent(s) have been involuntarily terminated by a court of competent jurisdiction;
- e. Any custodian of the child;
- f. Members of the child's extended family who are enrolled members of the Tribe;
- g. The child placement agency, including the Family Services Department or state social services agency, to which the adoptee has been or is proposed to be released or committed by order of a court of competent jurisdiction;
- h. The parent or guardian ad litem of an unemancipated minor parent of the adoptee;
- i. The Court and/or other court with continuing jurisdiction over the adoptee; and
- j. The guardian or guardian ad litem of an interested party.

24.03. *Putative Fathers as Interested Parties.* In addition to the parties listed in subsection 24.02, putative fathers shall be considered interested parties when such persons are identified by a court of competent jurisdiction.

24.04. *Who May File Petition.* Any person over the age of twenty-one (21) may file a petition to adopt another person.

24.05. *Petition for Adoption.* An adoption proceeding is commenced by filing a petition for adoption with the Court. The petition shall be filed by the person(s) who wishes to adopt the child and has been nominated by the person(s) or child placement agency with the authority to nominate such persons. It shall be signed by the person(s) filing the petition and shall contain:

- a. The full name, residence, documentary proof of date and place of birth, and the degree of Indian blood of the adoptee;
- b. The full name(s), residence(s), date(s), and place(s) of birth, degree(s) of Indian blood, occupation(s), and documentary proof of marital status of petitioner(s);
- c. Proof of parental consent to the adoption, if applicable, and notice to the child's surviving grandparent(s), if any;
- d. A copy of each release or order terminating parental rights over the child, if applicable;
- e. A copy of the order of commitment of the child to a child placement agency or proof of a guardian's appointment, if applicable;

- f. Proof of the child placement agency's release or consent to adoption and authorization to execute such release or consent to the adoption;
- g. A statement by the petitioner(s) that petitioner(s) desire that the legal relationship of a parent and child be established between petitioner(s) and the adoptee; and
- h. A full description and statement of value of all property owned or possessed by the adoptee to the best of the petitioner's knowledge.

24.06. *Investigative Report.* Upon the filing of a petition for adoption, the Court shall request that the Family Services Department investigate the stability of the adoptee for adoption, the financial ability, moral and physical fitness and general background of the adopting parent(s), and to file a report of such investigation, together with recommendations on the proposed adoption within thirty (30) days after receiving notice of the petition for adoption. The Court or the Family Services Department may request the assistance of any local, state, or federal agency in obtaining information as to the suitability of the potential adopting parents.

24.07. *Recommendation of the Binojeeuk Commission.* Upon completion of the investigative report, the Family Service Department shall submit the report to the Binojeeuk Commission and the Commission shall meet with the Family Service Department and formulate a recommendation for the Tribal Court.

24.08. *Parental Consent to Adoption and Release for Adoption.*

- a. *Interested Parties.* In a proceeding to approve consent to adoption filed by the surviving parent(s) or guardian, the interested parties entitled to notice of such proceedings include, but are not limited to:
 - 1. The person(s) executing the consent to adoption;
 - 2. The adoptee if he or she is over the age of twelve (12);
 - 3. The person(s) nominated by the parent(s) or guardian to adopt the child in such consent to adoption, if applicable;
 - 4. The child placement agency to which the adoptee is proposed to be released, if applicable; and
 - 5. The Family Services Department and Binojeeuk Commission.
- b. *Consent Procedure.* Provided the Binojeeuk Commission does not object to adoptive parent(s) nominated by the parent(s) or guardian, the Court may enter an order of adoption when a written consent to adoption, executed by the surviving parent(s) or guardian, is filed with the Court. The consent or release must be signed in the presence of the Court. The Court shall satisfy itself on the record that the person(s) releasing for adoption, or consenting to the adoption, of their child(ren) have been informed of the nature and consequences of their actions.

1. The minority age status of parent(s) shall not be a bar to the right of consent nor shall it invalidate such consent or release.
 2. The rights of non-consenting parents may be terminated pursuant to this Code. The Court may execute consent to adoption of such children or authorize the child placement agency with whom the child has been committed for care to execute such consent. In the event the Binojeeuk Commission objects to the acceptance of consent to adoption, the parent(s) or guardian, or the person(s) nominated by the parent(s) or guardian in the proposed consent to adoption, may file a petition for adoption in accordance with this section.
- c. *Withdrawal of Consent or Release for Adoption.* Any release or consent to adoption may be withdrawn by a parent(s) whose parental rights have not been terminated at any time before the entry of the final order of adoption.

24.09. *Hearing on Petition for Adoption; Open Adoption Permitted.* Within fourteen (14) days after receipt of the investigative report and recommendation from the Binojeeuk Commission, the Court shall schedule and hold a hearing to review the petition, documentation submitted in support of the petition, and the recommendations of the Binojeeuk Commission to determine if the proposed adoption is appropriate and in the best interests of the child. Such recommendations shall include consideration of provisions in the decree that allow continued or future contact or visitation with the child with his or her biological parent(s) and extended family of the biological parent(s). Such recommendations shall be based primarily on the best interests of the child, together with consideration of the wishes of the biological parent(s), the prospective adoptive parent(s) and the child.

24.10. *Appearance Mandatory.* The adoptee and adopting parent(s) shall appear in person at the hearing. The consenting parent(s) of the prospective adoptee shall also be required to appear at the hearing if the parental rights of such person(s) have not previously been terminated.

24.11. *Supervisory Placement.* If the Court determines that approval of the adoption petition is in the best interests of the child, the Court may enter an order terminating the rights of the consenting child placement agency, granting preliminary approval of the petition, making the child a ward of the Court, placing the child in the home of the prospective adoptive parents, and ordering periodic reports on the child's progress during the supervisory period, which shall not exceed three (3) months. The Court may waive all or part of the supervisory period if the proposed adoptive placement is with a member of the child's extended family or if the child has been living with the prospective adopting parents for more than six (6) months in a foster care or other situation.

24.12. *Final Hearing.* Not less than ninety (90) days, nor more than six (6) months, after the adoptee has been in custody of the adoptive parent(s), the parent(s), if any, the adoptee and adoptive parent(s) shall appear before the Court. They shall report to the Court about the welfare of the adoptee, the current status of their home and the desire of the adoptive parent(s) to finalize the adoption.

24.13. *Adoption Decree.* If the Court is satisfied that the interests of the adoptee are best served by the proposed adoption, the Court shall enter an order terminating the rights of the consenting parent(s) and/or entering a final decree of adoption. The Court may order or adoptive parent(s) may request a six (6) month extension of supervisory placement after which a final adoption decree must be entered or the adoptee shall be returned to the custody of the Court.

24.14. *Effect of Final Judgment.*

- a. After the final order of adoption is entered, the relation of parent(s) and child and the rights, duties and other legal consequences of a natural relation of child to parent(s) shall thereafter exist between the adoptee and the adoptive parent(s).
- b. The status of an adoptee as a member of the Tribe shall not be affected by adoption. An adoptee who is eligible for membership in the Little River Band shall be enrolled as a Tribal member prior to the finalization of the adoption.
- c. After the final order of adoption is entered, the natural parent(s) of the adoptee, except a natural parent who is the spouse of an adoptive parent, shall be relieved of all parental responsibilities for such adoptee and have no right regarding the adoptee or right to inherit property by descent or distribution.
- d. Minors adopted by order of the Court shall assume the surname of the person(s) by whom they are adopted unless the Court orders otherwise. Such adoptees shall be entitled to the same rights of person and property as children or heirs of the adoptive parents.

24.15. *Confidentiality.* Unless the Court orders otherwise, hearings held in proceedings under this chapter shall be confidential and shall be held in closed session, without the admission of any person other than the interested parties and witnesses. All papers, records, petitions or files pertaining to proceedings except the final judgment of adoption shall be maintained by the Court in locked files and shall not be released to anyone except pursuant to Court order. The Court may include provisions authorizing the biological parent(s), extended family members of the biological parent(s), and/or the adoptee access to certain papers, records, petitions or papers in its decree or final order of adoption. An adoptee upon reaching the age of majority shall have access to their adoption records.

Article XXV. Customary Adoption.

25.01. *Purpose.* It is the fundamental belief of the Little River Band of Ottawa Indians that its children are the sacred responsibility of the Tribe. One of this community's basic inherent sovereign rights is the right to make decisions regarding the best interests of its children, including determinations and designations of persons who should provide for the care, custody, and control of its children. This section is intended to insure a safe, stable, nurturing, and permanent environment for the Tribe's children and to provide for the protection of tribal children, tribal members, and tribal customs and traditions, without the termination of parental rights. As an alternative to the termination of parental rights and the adoption of a child in the

proceedings specifically defined in Sections 21 and 24, the proceedings in this Section may be utilized to effect the customary adoption of a child who is a tribal member, who is eligible for enrollment, or who is a descendant of a tribal member.

25.02. *Effect of Final Judgment.* In lieu of termination of parental rights, a customary adoption shall result in the permanent suspension of parental rights and the establishment of a permanent parent-child bond between the adopting parent(s) and the child.

25.03. *Permanent Suspension of Parental Rights.* The permanent suspension of parental rights shall include, but is not limited to, the following:

- a. A permanent suspension of the parental rights of the parent(s), including the suspension of the right to care, custody, and control of the minor;
- b. Authorization for the child to be adopted under this Code;
- c. A permanent suspension of the right of the parent(s) to have contact with the child, including contact in person, by mail, by telephone, or through third parties, until and unless a contact agreement reached between the parent(s) and the adopting parent(s) is approved by the court;
- d. An order restraining the parent(s) from contacting the child, the child's adoptive parent(s), and/or social services agency possessing information regarding the child;
- e. An order terminating a parent(s)'s obligation to pay child support, except arrearages arising pursuant to an existing support order;
- f. An order terminating any prior court order for custody, parenting time, or contact with the child;
- g. An order that the parent(s) shall have no standing to appear in future legal proceedings involving the child;
- h. A provision that the suspension of parental rights does not sever or affect in any way a child's relationship to his or her tribe;
- i. A provision that the suspension of parental rights does not sever or affect in any way a child's rights of inheritance from his or her parents; and
- j. A finding that the best interests of the child and the child's tribe support the permanent suspension of parental rights.

25.04. *Customary Adoption Decree.* A final order of customary adoption shall include, but is not limited to the following findings and orders:

- a. That the child has been adopted by the petitioner(s);
- b. That the parent-child bond between the petitioner(s) and the child is thereby established;
- c. That all the rights and responsibilities of the parent-child relationship shall thereafter be permanent and binding, including the right to inherit from each other as heirs at law; and
- d. A provision establishing the child's name.

25.05. The rights established through customary adoption shall be subject to termination as provided in Section 21. The tribal court shall retain jurisdiction to enter further orders as necessary for the health, welfare, and safety of the adoptee, including the temporary placement of a child adoptee with others.

25.06. Procedure. The provisions and procedures described in Section 24 shall apply to customary adoptions, except for those provisions that are in conflict with this Section.

Article XXVI. Emancipation.

26.01. Operation of Law. Emancipation may occur by operation of law or pursuant to a petition by a minor with the Court. Emancipation occurs by operation of law:

- a. When a minor is validly married;
- b. When a person reaches the age of eighteen (18) years;
- c. During the period when the minor is on active duty with the armed forces of the United States; and
- d. For the purposes of consenting to routine, non-surgical medical care or emergency medical treatment to a minor when the minor is in the custody of a law enforcement agency and the minor's parent or guardian cannot be promptly located.

26.02. Petition. An emancipation may also occur by Court order pursuant to a petition filed by a minor with the Court.

- a. The petition must be signed by the minor and must include an affidavit by an individual having personal knowledge of the minor's circumstances who believes that under the circumstances emancipation is in the best interest of the minor.
- b. After the petition is filed the Court may assign an employee to investigate the allegations; appoint legal counsel for the minor; appoint legal counsel for the minor's parent(s) or guardian if they are indigent; or dismiss the petition if the minor's custodial parent does not consent and is providing support.

- c. The Court may issue an emancipation order if it determines that emancipation is in the best interest of the minor and the minor establishes that:
 1. The minor's parent or guardian does not object to the petition;
 2. The minor is at least sixteen (16) years of age;
 3. The minor is a resident of the Tribe's nine (9) county service area;
 4. The minor has demonstrated ability to manage financial affairs including proof of employment or other means of support;
 5. The minor has the ability to manage personal and social affairs; and
 6. The minor understands the rights and responsibilities as an emancipated minor.
- d. The minor or parent or guardian of the minor may file an appeal from the Court's grant or denial of an emancipation petition or a minor emancipated by court order may petition the Court to rescind the order.

26.03. *Rights and Responsibilities.* A minor emancipated by operation of law or by court order will be considered to have the rights and responsibilities of an adult except for those specific constitutional and statutory age requirements regarding voting, use of alcoholic beverages, and the health and safety regulations relevant to the minor because of age. A minor will be considered emancipated for the purpose of the following rights:

- a. To enter into enforceable contracts;
- b. To sue or be sued in the minor's name;
- c. To retain the minor's own earnings;
- d. To establish a separate domicile;
- e. To act autonomously and with the right and responsibilities of an adult in all business relationships;
- f. To earn a living;
- g. To authorize the minor's own physical and mental health care;
- h. To apply for a driver's license or other state or Tribal license;
- i. To register for school;

- j. To marry;
- k. To apply to medical assistance programs administered under the State of Michigan Social Welfare Act or Indian Health Service or Tribal Health Services;
- l. To apply for welfare assistance;
- m. If a parent, to make decisions and give authority in caring for the minor; and
- n. To make a will.

26.04. *Debts incurred by emancipated minor.* Parents of a minor emancipated by court order are not liable for any debts incurred by the minor during the period of emancipation.

Article XXVII. Authorization of Medical Treatment.

27.01. *Conditions Under Which Court May Authorize.* At any time, regardless of whether a child is under the authority of the Court, the Court may authorize medical or surgical care for a child when:

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

27.02. *Consideration by the Court.* In making its order the Court shall give due consideration to any treatment being given the child by prayer through spiritual means alone or through other methods approved by Tribal customs or traditions or religions, if the child or the parent(s), guardian or custodian are adherents of an established religious denomination that relies on this form of treatment in lieu of medical treatment or practice the Tribal customs, traditions or religious which is relied upon for such treatment of the child.

27.03. *Oral Authorizations by Court.* Oral authorization by the Court is sufficient for care or treatment to be given and shall be accepted by any physician or hospital. No physician or hospital nor any nurse, technician or other person under this direction of such physician or hospital shall be subject to criminal or civil liability in the Court for performance of care or treatment in reliance shall be regarded as if it were performed with the child's and the parent(s') authorization.

27.04. Authorizations Reduced to Writing. After entering any authorization under this section, the Court shall reduce the circumstances, finding and authorization in writing and enter it in the records of the Court and shall cause a copy of the authorization to be given to the appropriate physician, hospital or both.

Article XXVIII. Drug Abuse During Pregnancy.

28.01. Jurisdiction. The Court may take jurisdiction of a pregnant woman who has engaged in abuse of alcohol or a controlled substance upon a showing by a preponderance of the evidence that the woman is pregnant and abusing alcohol or controlled substance.

28.02. Court Orders. Upon assuming jurisdiction, the Court may enter orders regarding such person requiring the woman to refrain from drug abuse, submit to reasonable measures to assure non-use and comply with community based or in-patient treatment programs. Such court orders may be enforced through the Court's civil contempt power.

28.03. Information. Information made available to a Court order regarding a woman's drug use during pregnancy may not be used in a criminal prosecution against the woman.

Article XXIX. Rehearing.

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

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

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

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

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

29.06. Stay. The Court may stay any order pending a ruling on the motion.

Article XXX. Tribal Court Appeals.

30.01. *Who can Appeal.* Any party to a Court hearing held under this Code may appeal a final Court order to the Little River Band of Ottawa Indians Appellate Court. An order terminating parental rights is appealed by right.

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

30.03. *Review Standard.* The clearly erroneous standard shall be used in reviewing the findings of the Court on appeal.

30.04. *Record.* For purposes of appeal, a record of proceedings shall be made available to the child, the parent(s), guardian or custodian, the child's counsel and others upon court order. Costs of obtaining this record shall be paid by the party seeking the appeal.

30.05. *Stay of Appeal.* A court order may be stayed upon order of the Appellate Court.

30.06. *Conduct of Proceedings.* All appeals shall be conducted in accordance with the Tribal Code and Tribal Court Rules of Procedure as long as those provisions are not in conflict with the provisions of this Children's Protection Code.

Article XXXI. Foster Home Standards.

31.01. *Foster Home Licensing.* An individual or entity may apply to the Binojeeuk Commission for a license for a foster home for the care of children as provided in this Section.

31.02. *Foster Home Standards.*

- a. A home may be licensed as a foster home under this section if it is:
 1. Located on the Tribe's reservation or trust lands;
 2. An extended family placement for the child to be placed in it. An extended family placement is a placement with an adult related to the child as a grandparent, aunt or uncle, brother or sister, brother in law or sister, niece or nephew, first or second cousin or stepparent; or
 3. A home located off the Tribe's reservation or trust lands.
- b. The following standards shall be applicable to the foster home:
 1. The home shall be so constructed, arranged and maintained so as to provide adequately for the health and safety of occupants.
 2. Water supply systems must meet the requirements for safe drinking water. Sewage disposal systems shall be environmentally safe. An inspection for water quality may be required.

- c. The following standards shall be applicable to the foster family:
1. All members of the household must be in such physical and mental health as will not affect adversely either the health of the child or the quality and manner of his care.
 2. Members of the foster family shall be of good character, habits and reputation; relationships within the family shall be such that a wholesome atmosphere for the child will be assured. All members of the foster family shall be willing to accept the foster child into the home as a member of the family group.
 3. The persons in charge of the foster home shall be of suitable temperament to care for children; shall understand the needs of 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/or the supervising agency.
 4. Infants and young children shall never be left alone without competent supervision. Older foster children may be left based upon their individual maturity and development skills.

31.03. Waiver of Standards. A foster home standard may be waived in writing by the Binojeeuk Commission, for good cause shown, in writing on a case-by-case basis.

Article XXXII. Group Home Standards.

32.01. Group Home Licensing. An individual or entity may apply to the Binojeeuk Commission for a license for a group home for the care of children as provided in this Section.

32.02. Group Home Standards.

- a. A home may be licensed as a group home if it is located on the Tribal lands of the Little River Band of Ottawa Indians.
- b. Employee records shall be maintained for each employee and shall include all of the following:
 1. Name;
 2. Verification of education where minimum education requirements are specified by rule;
 3. Work History;
 4. Three references;

5. A record of any convictions other than minor traffic violations. Where such references are not available or practical to obtain prior to the employment date, the employee shall provide a certification as to the existence of any record of convictions; provided, such request for record clearances is made prior to the date of employment; and
 6. Written evaluations of the employees shall be performed on a regular basis. The first evaluation shall be performed at the end of the probationary period. Subsequent evaluations shall be performed on a periodic basis but not less than annually.
- c. The licensee shall have a sufficient number of administrative, supervisory, social service, direct care and other staff to perform the prescribed functions required by this Section and to provide for the needs, protection and supervision of residents.
 - d. The ratio formula for direct care workers shall correspond with the institution's purpose and the needs of the residents and shall assure the continual safety, protection and direct care and supervision of residents.
 - e. The licensee shall develop and adhere to a written staff-to-resident ratio for direct care workers.
 - f. The licensee shall document that each employee and volunteer who has contact with residents four or more hours per week for more than two consecutive weeks is free from communicable tuberculosis.
 - g. A person with ongoing duties shall be of good moral character, emotionally stable, and of sufficient health, ability, experience and education to perform the duties assigned.
 1. The person shall provide certification as to the existence of a criminal record which shall indicate specific convictions. This record shall be indicative of a person of good moral character.
 2. The person shall provide certification that they have not been found in substantiation of child abuse or neglect.
 3. Subsections (a) and (b) shall be confirmed through independent verification.
 - h. The licensee shall provide an orientation program for new employees. The orientation shall include the following:
 1. The institution's purpose, policies, and procedures, including discipline, crisis intervention techniques, and emergency and safety procedures; and

2. The role of the staff members as related to service delivery and protection of the child.
- i. The following environmental safety standards shall apply to group homes:
 1. Group Homes shall be inspected for health and safety issues at least once per calendar year by a qualified agent independent of Group Home staff.
 - j. An institution shall provide sufficient resident living space, office space and equipment to assure delivery of licensed services.
 1. Sleeping rooms shall provide adequate space for each resident.
 - k. An institution shall establish and follow written procedures for potential emergencies and disasters, including fire, severe weather, and medical emergencies and missing persons.
 - l. An institution shall assure resident and parent privacy and confidentiality and shall protect residents from exploitation.
 - m. An institution shall establish and follow written policies and procedures regarding discipline and behavior management. Upon request, these shall be available to all residents, their families and referring agencies. Staff shall receive a copy of these policies and procedures and shall comply with them.
 - n. An institution shall establish and follow written health service policies and procedures addressing all of the following:
 1. Routine and emergency medical and dental care;
 2. Health screening procedures;
 3. Maintenance of health records;
 4. Storage of medicines;
 5. Dispensing medication; and
 6. Personnel authorized to dispense medications.
 - o. Any serious injury or illness requiring hospitalization of a resident shall be reported to the parent and responsible referring agency as soon as possible, but not more than twenty-four (24) hours later. This rule does not apply to emergency room treatment where the illness or injury is treated and the resident is not hospitalized. In such cases, the parent shall be notified, but not necessarily within twenty-four (24) hours.

- p. The death of a resident shall be reported immediately to the parents or next of kin, the Director of the Family Services Department, and referring agency.
- q. The following treatment planning standards shall apply to group homes:
 - 1. A child shall be admitted only after establishing that the institution is an appropriate placement to meet the child's needs;
 - 2. Upon admission, all of the following shall be in the resident's case record:
 - (i) Name, address, birth date, sex, race, height, weight, hair color, eye color, identifying marks, religious preference and school status;
 - (ii) A brief description of the resident's preparation for placement and general physical and emotion state at time of admission;
 - (iii) Name, address, and marital status of parents and name and address of legal guardian, if known;
 - (iv) Date of admission and legal status;
 - (v) Documentation of legal right to provide care;
 - (vi) Authorization to provide medical, dental, and surgical care and treatment; and
 - (vii) A brief description of the circumstances leading to the need for care;
 - 3. A case record shall be maintained on each resident;
 - 4. Medical treatment and health services shall be provided as follows:
 - (i) Medical treatment shall be under the supervision of a licensed physician;
 - (ii) An institution shall provide and document periodic physical examination for each resident as follows, unless greater frequency is medically indicated;
 - (iii) Sufficient health history information shall be documented for each resident to assure proper medical care;
 - (iv) A resident shall have current immunizations as required by the Department of Public Health and/or the Michigan Department of Education; and
 - (v) A licensee shall arrange for the provision of and shall document dental examination and treatment of each resident. A dental examination within twelve (12) months prior to admission shall be documented or there shall be an examination not later than three months following admission. Reexamination shall be provided at least annually.
- r. An initial service plan shall be completed.

- s. An updated service plan shall be completed and recorded for each resident.
- t. When a resident is discharged from institutional care a Group Home Care Termination Summary will be completed.

32.03. *Waiver of Standards.* A Group Home Standard may be waived in writing by the Binojeeuk Commission, for good cause shown, on a case-by-case basis.

Article XXXIII. Childcare Facility Standards.

33.01. *Center Licensing.* An individual or entity may apply to the Binojeeuk Commission for a license for a childcare facility as provided in this Section.

33.02. *Center Standards.* A center may be licensed as a childcare facility under this Section if:

- a. It is located on Tribal Land or Tribal Reservation; and
- b. The licensing rules and practices are found to be in compliance with this Code and, unless otherwise stated in this Code, the Licensing Rules for Child Care Centers, as amended. The Licensing Rules for Child Care Centers, administered by the State of Michigan Department of Human Services Bureau of Child and Adult Licensing, is hereby adopted and incorporated by reference herein. Any reference to the “department” in the Licensing Rules for Child Care Centers shall mean the Binojeeuk Commission.

33.03. *Center Program Director Qualifications; Responsibilities.* The program director shall not be required to be present in the center in accordance with Rule 400.8113(3) of the Licensing Rules for Child Care Centers.

33.04. *Center Staff.* All staff must be qualified and complete a background criminal history check pursuant to the Tribe’s background check policy. A center must keep on file verification of the educational qualifications and current job descriptions for all center staff.

33.05. *The Ratio and Group Size Requirements.* All staff shall provide appropriate care and supervision of children at all times by meeting or exceeding the standards in this Section. The ratio of center staff to children present at one time in the center and during outdoor activities must be based upon the following provisions:

- a. At least two (2) adults, one (1) of whom is a caregiver, shall be present at all times when at least three (3) children between the ages of birth and three (3) years of age are present. A second caregiver is required when needed to comply with subsection c.
- b. At least two (2) adults, one (1) of whom is a caregiver, shall be present at all times when seven (7) or more children over three (3) years of age are present. A second caregiver is required when needed to comply with subsection c.

- c. In each room or well-defined space, the maximum group size and ratio of caregivers to children, including children related to a staff member or the licensee, shall be the following:
 - 1. For children birth to thirty (30) months of age, there must be one (1) center staff per four (4) children with a maximum group size of twelve (12).
 - 2. For children thirty (30) months of age to three (3) years of age, there must be one (1) center staff per eight (8) children with a maximum group size of sixteen (16).
 - 3. For children three (3) to four (4) years of age, there must be one (1) center staff per ten (10) children.
 - 4. For children four (4) years of age to school-age, there must be one (1) center staff per twelve (12) children.
 - 5. For school-age children, there must be one (1) center staff per eighteen (18) children.

33.06. Program Requirements. A center must adhere to the following requirements:

- a. Provide a program of daily activities and relationships that promote opportunities for emotional, social, physical, cognitive, and cultural developmental growth of each child;
- b. Permit parents to visit the program anytime during operating hours;
- c. Provide each child in attendance for five (5) or more hours per day an opportunity to rest; and
- d. Ensure that a child is not in care for more than thirteen (13) hours per day.

33.07. Discipline. Center staff must use positive methods of discipline that encourage self-control, self-direction, self-esteem, and cooperation. Non-severe discipline or restraint may be used when necessary, based on a child's development, to prevent a child from harming himself or herself or to prevent a child from harming other persons or property, excluding those forms of punishment prohibited by this subsection.

- a. The following means of punishment shall be prohibited:
 - 1. Hitting, spanking, shaking, biting, pinching or inflicting any form of corporal punishment
 - 2. Restricting a child's movement by binding or tying him or her;

3. Inflicting mental or emotional punishment, such as humiliating, shaming or threatening a child;
 4. Depriving a child of meals, snacks, rest or necessary toilet use;
 5. Excluding a child from outdoor play or other gross motor activities;
 6. Excluding a child from daily learning experiences; and
 7. Confining a child in an enclosed area, such as a closet, locked room, box or similar cubicle.
- b. A center shall develop and implement a policy regarding the discipline of children to be provided to staff and parents. The policy shall be in written form and age appropriate.

33.08. *Equipment Requirements.* A center must provide the following:

- a. Materials and furniture that are safe, clean and in good repair;
- b. Cot or crib (depending on the child's age) to each child who is enrolled five (5) or more hours per day for use during rest periods;
- c. Adequate floor space for the safe positioning of cots or cribs; and
- d. Equipment and materials that provide for:
 1. Large and small muscle activity;
 2. Sensory exploration;
 3. Social interaction and dramatic play;
 4. Cognitive development through music, literature, and storytelling;
 5. Creative experiences through art and music; and
 6. Cultural enrichment through storytelling, art, and literature.

33.09. *Food Service and Nutrition.* A center will follow regulations of the Michigan Child and Adult Care Food Program.

33.10. *Child Information Records.* A center must maintain the following records:

- a. Accurate updated child information forms on each child enrolled in the center;

- b. Records of all accidents or illnesses which occur while a child is in care, which accident or illness may or may not result in hospitalization or death. This report must be submitted to the Director of the Family Services Department within twenty-four (24) hours;
- c. Updated immunization records on file for each child or a waiver signed by the parent(s) denying or refusing due to medical or religious beliefs; and
- d. A signed statement of the child's health based on an evaluation by a licensed physician or his or her designee that shall be updated every two (2) years thereafter. Restrictions, if any, on activities shall be stated by a licensed physician or his or her designee.

33.11. *Health of Personnel Requirements.* A center shall have on file a "Medical Clearance Form" completed by a licensed physician or his or her designee for each staff member that shall be updated every two (2) years. A center shall have on file evidence that each staff or student is free from communicable tuberculosis and verified every two (2) years thereafter.

33.12. *Administration of Medications.* When a center administers medication, the following provisions must apply:

- a. All medications must be given or applied only with prior written permission from the parent. Prescription medication must have the pharmacy label indicating the physician's name, child's name, instructions, and name and strength of the medication and must be given in accordance with those instructions;
- b. Center staff must maintain a record as to the time and the amount of any medication given or applied;
- c. The medication must be in the original container, stored according to the instructions and clearly labeled for the specific child. Staff must keep the medication out of the reach of children and must return the medication to the parent or destroy when no longer needed; and
- d. All staff must comply with the above regulations.

33.13. *Health Surveillance.* Health surveillance measures include the following:

- a. A center is responsible for reporting to the parent observed changes in the child's health or any accidents that may have happened to the child;
- b. A child too ill to remain in care must be placed in a separate area where he or she may be cared for and supervised until he or she can be taken home; and
- c. A child that has contracted a communicable disease must not return to care until the child is no longer contagious as recommended by the Center for Disease Control.

33.14. Admission and Withdrawal Criteria; Schedule or Operation; Fee Policy. A center must provide each parent with a Parent Handbook, which includes all of the above-mentioned information.

33.15. Telephone Service. A telephone must be available and accessible in the building during the hours of operation. Pay telephones are not considered as meeting this requirement. Emergency telephone numbers, including fire, police, poison control center and ambulance, must be posted.

33.16. Indoor Activity Space. For each child birth to two (2) years of age, a center must have a minimum of fifty (50) square feet of indoor activity space for use by and accessible to the child. For each child two (2) to twelve (12) years of age, a center must provide thirty-five (35) square feet of activity space for use by, and accessible to, the child. The following is excluded from child activity space:

- a. Hallways;
- b. Bathrooms;
- c. Reception and office areas;
- d. Kitchens;
- e. Storage areas and cloakrooms; and
- f. Areas used exclusively for resting, sleeping or eating.

33.17. Outdoor Play Area. A center operating five (5) or more continuous hours a day must have a safe fenced-in outdoor play area which allows no less than fifty (50) square feet per child. Age-appropriate play equipment must be provided.

- a. A center shall not be required to follow the following rules as stated in R 400.8170 of the Licensing Rules for Child Care Centers:
 1. Rule 170(13) The depth of the loose fill surface materials shall be restored to its required depth when it has been moved or becomes otherwise comprised.
 2. Rule 170(15) Materials used on natural playground shall not be in the use zones for other playground equipment.
 3. Rule 170(16) The elevated playing surface of materials used on a natural playground shall not exceed thirty (30) inches.

33.18. Sleeping Equipment; Seating for Staff. Children less than twelve (12) months of age must sleep in cribs or beds with side rails and firm mattresses. Children over twelve (12) months

of age must sleep in cribs or on cots provided by the center. Center staff may allow infants under the age of twelve (12) months who have fallen asleep in infant seats or swings, sufficient time to determine sound sleep before moving to a crib. A rocker or comfortable adult size chair must be provided for one-half (1/2) the staff on duty in each room.

33.19. *Health and Safety, Environmental Health, and Fire Safety Provisions.* A center will be inspected for health and safety, environmental health, and fire safety provisions. Findings and recommendations shall be implemented by the center.

- a. A center shall be inspected for health and safety once per calendar year. The inspection will be completed by the Little River Band of Ottawa Indians Department of Public Safety.
- b. A center shall be inspected for environmental health provisions by the Little River Band of Ottawa Indians Housing Department once per calendar year. A center shall not be required to follow R 400.8310(2) of the Licensing Rules for Child Care Centers, which states carpeting is prohibited in food preparation areas.
- b. A center shall be inspected by the local health department, pursuant to R 400.8305 of the Licensing Rules for Child Care Centers, prior to adding a food service program and every two (2) years, at the time of renewal, if the center provides food service where the food is prepared and served on-site.
- c. A center's outdoor play area shall be inspected by a certified playground safety inspector, pursuant to R 400.8170 of the Licensing Rules for Child Care Centers, before use and as recommended by the manufacturer's maintenance instructions and inspection schedules. If the manufacturer's recommendations are not available, a maintenance schedule should be developed based on actual or anticipated playground use.
- d. A center shall be inspected by a certified fire inspector, pursuant to R 400.8501 of the Licensing Rules for Child Care Centers.

33.20 *Incident, Accident, Injury, Illness Death, Fire Reporting.*

- a. A center shall submit a verbal report within twenty-four (24) hours and written report within seventy-two (72) hours to the Director of the Family Services Department, which shall be provided to the Binojeeuk Commission at the next regularly scheduled meeting, of the occurrence of any of the following:
 1. A child is lost or left unsupervised.
 2. An incident involving an allegation of inappropriate contact.
 3. The death of a child in care.

4. A fire on the premises of the center that requires the use of fire suppression equipment or results in loss of life or property.
 5. The center is evacuated for any reason.
 6. The center received notification by a parent that a child received medical treatment or was hospitalized for an injury, accident, or medical condition that occurred while the child was in care.
- b. A center shall keep a copy of the report on file at the center.

Article XXXIV. Licensing.

34.01 License required. As set forth in sections 31, 32 and 33 of this Code no person or entity shall operate a Foster Home, Group Home, or Child Care facility within the jurisdiction of the Tribe unless such activity is conducted at a facility licensed by the Binojeeuk Commission. A separate license shall be required for each location at which the licensed activity is conducted under this Ordinance.

34.02. Types of licenses. The Binojeeuk Commission may issue each of the following types of licenses:

- a. *Foster Home licenses.* This license shall be required for each location where a foster home is located;
- b. *Group Home licenses.* This license shall be required for each location where a group home is located; and
- c. *Child Care Providers licenses.* This license shall be required for each location where family or group childcare is provided.

34.03. License Application Procedures. To obtain a license for any activity regulated under the provisions of this Ordinance, the applicant shall submit an application on the form approved by the Binojeeuk Commission. The licensing procedure consists of the following steps.

- a. Submission of a completed application to the Family Services Department.
- b. Review of the application and report conducted by the acting Family Services Department licensure worker, including but not limited to home studies, facility inspections, and background checks.
- c. Final review and decision made by the Binojeeuk Commission.
- d. Written notification of decision to the applicant.

34.04. Action on Applications. Within a reasonable time of receipt of the completed application the Binojeeuk Commission shall review the application and background investigation to

determine if the license shall be granted or the application denied. If the application is denied, the Binojeeuk Commission shall give written notice to the applicant within fourteen (14) days of the decision and shall set forth in writing the reason(s) for the denial. The notice shall also inform the applicant of the applicant's right to request a hearing and appeals. The applicant may file an immediate appeal with Tribal Court and the Tribal Court shall hear the appeal within fourteen (14) days of receipt of the appeal. The decision of the Tribal Court shall be final and may not be appealed to the Tribal Court of Appeals.

34.05 Denial/Suspension/Revocation of License. This section applies to any applicant or licensee who is adversely affected by a decision of the Binojeeuk Commission with regard to the denial, suspension, or revocation of a license issued by the Binojeeuk Commission pursuant to this Ordinance.

- a. *Hearing upon denial or other adverse action.* Any applicant or licensee who is adversely affected by a decision of the Binojeeuk Commission in concern with the denial, suspension or revocation of a license applied for under this Ordinance may request a hearing before the Binojeeuk Commission by written request submitted within thirty (30) days following notice of action by the Binojeeuk Commission. Within fourteen (14) days following receipt of notice requesting a hearing, the Binojeeuk Commission shall afford the applicant or licensee an opportunity to appear and be heard before the Binojeeuk Commission, in person or with a representative or legal counsel, and to submit such evidence as the applicant or entity deems relevant in the matter. The Binojeeuk Commission may receive evidence from the applicant or licensee, the Tribe, or any person or entity that the Binojeeuk Commission deems relevant. The Commission shall either affirm or reconsider its decision to deny, suspend or revoke the license within seven (7) days following the hearing.
- b. *Suspension/Revocation of License:* Any license may be suspended or revoked if the Binojeeuk Commission determines that any of the following has occurred:
 1. The licensee has violated any of the standards set forth in this Code; the licensee has intentionally made a material false and misleading statement in a license application or to the Family Services Department; or the licensee has refused to comply with any lawful order of the Binojeeuk Commission.

Article XXXV. Severability.

35.01. Severability of the Ordinance. If any section, subsection, paragraph, sentence or other portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of this remaining portions hereof.

CERTIFICATTON

I, Gary DiPiazza, Tribal Council Recorder, do hereby certify that this is a true and correct copy of the Children's Protection Code, Ordinance #98-900-01 permanently adopted by the Tribal Council on June 8, 1998 and amended on September 11, 2019.


Gary DiPiazza, Tribal Council Recorder

[Seal]

