

POKAGON BAND OF POTAWATOMI INDIANS

CHILD PROTECTION CODE

Section 1. Purpose1

Section 2. Authority.....1

Section 3. Definitions2

Section 4. Jurisdiction of the Court8

Section 5. Officers of the Tribal Court8

Section 6. Department of Social Services.....10

Section 7. Protective Services11

Section 8. Child Welfare12

Section 9. Child Protection and Multidisciplinary Teams12

Section 10. Reporting and Investigating Child Abuse or Neglect13

Section 11. General Provisions Regarding Proceedings Under This Code.....14

Section 12. Service of Summonses, Subpoenas, Notices, and Other Documents.....17

Section 13. Putative Fathers20

Section 14. Placement of Children21

Section 15. Removal Orders23

Section 16. Transfers of Jurisdiction23

Section 17. Intervention In and Transfer From State Court24

Section 18. Emergency Removal for Protective Custody and Emergency Medical Treatment.....26

Section 19. Child Protection Petitions.....31

Section 20. Preliminary Hearings33

Section 21. Adjudication Hearings.....36

Section 22. Disposition Hearings37

Section 23. Disposition Review Hearings.....38

Section 24. Termination of Parental Rights39

Section 25. Full Guardianship or Conservatorship41

Section 26. Juvenile Guardianship.....51

Section 27. Permanency Planning58

Section 28. Voluntary Relinquishment of Parental Rights59

Section 29. Authorization for Medical Care59

Section 30. Delegations of Parental Authority60

Section 31. Adoption.....60

Section 32. Emancipation of a Minor64

Section 33. Reimbursement of Costs of Care or Service66

Section 34.	Child Protection Records	70
Section 35.	Motions for Rehearings or Reconsideration	72
Section 36.	Appeals.....	73
Section 37.	Enforcement	73
Section 38.	Savings Clause	73

POKAGON BAND OF POTAWATOMI INDIANS

CHILD PROTECTION CODE

Section 1. Purpose

A. **Purpose.** The Child Protection Code shall be liberally interpreted and construed to fulfill the following expressed purposes:

1. To provide for the welfare, care and protection of the children and families within the jurisdiction of the Pokagon Band of Potawatomi Indians;
2. To preserve the unity of the family, preferably by separating the child from his or her parents only when necessary;
3. To serve the cultural, spiritual, emotional, mental, and physical welfare of the child and the interest of the Band in preventing the abuse, neglect and abandonment of children;
4. To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community-based alternatives;
5. To secure the rights of and ensure fairness to the children, parents, guardians, custodians and other parties who come before the Tribal Court under the provisions of this Code;
6. To preserve and strengthen the child's cultural and ethnic identity whenever possible;
7. To recognize and employ the tribal customs and traditions of the Pokagon Band regarding child-rearing; and
8. To provide procedures for intervention in state court proceedings regarding Indian children and for transfer of jurisdiction over Indian children from state and other tribal courts to the Pokagon Band Tribal Court.

Section 2. Authority

Pursuant to the authority of the Tribal Council of the Pokagon Band of Potawatomi Indians ("Pokagon Band") under Article IV, Section 1, of the Pokagon Band's By-Laws to manage "the property, business, and affairs of the Pokagon Band" and to "exercise all such powers of the Pokagon Band as by law directed or required by the Pokagon Band to be exercised", and pursuant to the inherent authority of the Band as a sovereign tribal nation to provide for the health, safety, and welfare of the Pokagon Band, the Tribal Council hereby establishes the Pokagon Band Child Protection Code.

Section 3. Definitions

The following terms, whenever used or referred to in this Code, shall have the following respective meanings, whether used in the singular or plural forms:

A. **“Adult”** means:

1. A person eighteen (18) years of age or older, excluding a Child who is at least eighteen (18) years of age, but less than twenty-one (21) years of age and over whom the Tribal Court is exercising continuing jurisdiction pursuant to Section 4 of this Code, or
2. A person who has been emancipated by order of a court of competent jurisdiction.

B. **“Band”** or **“Pokagon Band”** means the Pokagon Band of Potawatomi Indians.

C. **“Best Interests of the Child”** means the meaning determined by the Tribal Court from an application of all of the following factors to each particular case:

1. The emotional ties between the parties involved and the child and the capacity and disposition of the parties involved to give the child love and guidance;
2. The capacity of the parties involved to educate and train the child in his or her religion or creed, if any;
3. The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this Band;
4. The length of time the child has lived in a stable, nurturing environment, and the desirability of maintaining continuity;
5. The permanence, as a family unit, of the existing or proposed custodial home or homes;
6. The moral fitness of the parties involved, as determined by their conduct, habits and associations;
7. The mental and physical health of the parties involved;
8. The home, school, and community record of the child;
9. The reasonable preference of the child, if the Tribal Court considers the child to be of sufficient age and maturity to express preference;
10. The willingness and ability of each of the parties to facilitate and encourage a close,

positive, and continuing parent-child relationship between the child and the other parent or the child and the parents to the extent such relationship does not pose a risk of harm to the child;

11. Domestic violence, regardless of whether the violence was directed against or witnessed by the child; and
12. The capacity and disposition of the parties involved to instill the child with Pokagon Band culture and values and, secondarily, other native American culture and values through the customary child rearing practices of the Pokagon Band; and
13. Any other factor considered by the Tribal Court or the Family Welfare Commission to be relevant to a particular child placement matter.

D. **“Child”** means a person who is less than eighteen (18) years of age and has not been emancipated by order of a court of competent jurisdiction. The term **“Child”** also includes a person who is at least eighteen (18) years of age, but less than twenty-one (21) years of age, and over whom the Tribal Court is exercising continuing jurisdiction pursuant to Section 4 of this Code.

E. **“Child Abuse”** means verbal or physical conduct involving or in the presence of a child that is harmful to the child, including without limitation:

1. physical injury, including bruising, bleeding, malnutrition, failure to thrive, burns, fractures of any bone, *subdural hematoma*, soft tissue swelling, or death suffered by a child that is not caused by accident;
2. any case in which a child is subjected to sexual assault, sexual contact, sexual molestation, sexual exploitation, or prostitution;
3. mental or emotional abuse suffered by a child; or
4. any other harm or threatened harm to a child that occurs through non-accidental action by any person responsible for the child’s health or welfare.

F. **“Child-In-Need-Of-Protection”** means a child

1. who has no parent, guardian, or custodian with legal authority available who is willing and able to care for him or her;
2. whose parents are separated and no court of competent jurisdiction has issued a custody or support order;
3. who has suffered or is likely to suffer child abuse;
4. who has suffered or is likely to suffer neglect from a parent, guardian or custodian,

- regardless of whether or not the child's health and welfare has been adequately provided for by another person;
5. who has committed delinquent acts as a result of pressure, guidance, approval or failure to properly supervise by the parents, guardian, or custodian of the child;
 6. who is born addicted to alcohol or to any controlled substance;
 7. whose parent, guardian, or custodian has been convicted of a violent or criminal sexual crime against another parent, legal guardian, or custodian, or against a sibling of the child;
 8. whose custodial parent, or guardian or custodian has been convicted of a crime of a nature that demonstrates the parent's, guardian's or custodian's unfitness to be a suitable caretaker of the child;
 9. whose parent, legal guardian, or custodian had an opportunity to prevent abuse or avoid neglect of the child and failed to do so;
 10. whose custodial parent has had his or her parental rights to a sibling of the child terminated; or
 11. who is found under conditions that would support grounds for involuntary termination of parental rights found in Section 24 of this Code.
- G. **"Child Neglect"** includes, but is not limited to, negligent treatment or maltreatment of a child by a person, including a person responsible for the child's welfare, under circumstances which indicate that the child's health or welfare is harmed or threatened thereby. Negligent treatment or maltreatment includes without limitation the failure of the parents, guardian, custodian, or any other person responsible for a child's health or welfare to provide adequate food, clothing, shelter, medical care, education, or supervision necessary for such child's health or welfare.
- H. **"Child Protection Team"** means a team established to involve and coordinate the child protection services of various agencies as set forth in Section 9 of this Code.
- I. **"Conservator"** means a person, other than a parent, guardian, or custodian, who has been authorized by a court of competent jurisdiction to exercise authority relative to the collection, care, preservation, administration and protection of the Ward's Estate.
- J. **"Controlled Substance"** means a controlled substance as defined now or hereafter by the Public Acts of Michigan law or by Federal law.
- K. **"Custodian"** means a person, other than a parent or guardian, to whom custody of the child has been given by a court or by a person who has legal custody.

- L. **“Department of Social Services”** means the Tribal agency responsible for providing children with the protective and other social services provided for in this Code.
- M. **“Domicile”** means a person’s permanent place of residence. The domicile of a child is generally that of the custodial parent, guardian or custodian. Domicile includes the intent to establish a permanent home or the place where the parent, guardian or custodian considers his or her permanent home.
- N. **“Estate”** means income, accounts, securities, assets, liabilities and personal and real property.
- O. **“Extended Family”** means an adult person who is the child’s niece or nephew, first or second cousin, or non-kinship relations recognized by a consensus of Immediate Family Members.
- P. **“Family Welfare Commission”** means the commission appointed by the Tribal Council to protect the best interests of the children of the Band and promote the stability and security of the Band as provided by the Family Welfare Commission Ordinance.
- Q. **“Father”** means a man whose paternity of a child is lawfully established.
- R. **“Guardian”** means a person, other than a parent or custodian, who has been authorized by a court of competent jurisdiction to exercise the duty and authority to provide for the care, custody and control of the Ward.
- S. **“Immediate Family”** means an adult person who is the child’s parent or stepparent, excluding a parent or stepparent from whose custody the child was removed, aunt or uncle, brother or sister, brother-in-law or sister-in-law, or grandparent.
- T. **“Indian Child Welfare Act” or “ICWA”**: The Indian Child Welfare Act of 1978, 25 U.S.C. 1901 *et seq.*, as amended.
- U. **“Juvenile Guardian”** means an adult, over the age of eighteen, other than a Parent, who has been authorized by the Tribal Court under Section 26 to exercise the duty and authority to provide for the care, custody and control of a Child deemed a Child-In-Need-Of-Protection who is a temporary or permanent Ward of the Tribal Court.
- V. **“Least Restrictive Alternative”** means the placement option that is the least restrictive on the liberty interest of the child and Immediate Family, and achieves the objectives of this Code.
- W. **“Mother”** means the biological mother of a child or, in the cases of surrogate motherhood or other non-traditional circumstances involving the creation or gestation of an embryo, the adult female considered to be the mother of a child based on the applicable law of the place where the child was born.

- X. **“Multidisciplinary Team”** means a team established to coordinate the law enforcement services of Tribal, federal and state agencies concerning child protection matters as set forth in Section 9.
- Y. **“Parent”** means the biological mother or father of a child or a child’s adoptive parent, but not including persons whose parental rights have been terminated or an unwed father whose paternity has not been lawfully established.
- Z. **“Parental Rights”** means legal rights to exercise control over a child within the limits of the law and to fulfill the responsibilities, duties and obligations of a parent to a child, including without limitation providing the child with:
1. care, custody, health, and protection;
 2. advise and counsel;
 3. discipline;
 4. education;
 5. religious education and training;
 6. fiduciary control over a child’s earnings and assets; and
 7. direction and control over the child’s activities.
- AA. **“Pokagon Child”** means any child who is an enrolled member of the Pokagon Band of Potawatomi Indians or eligible to be a member of the Pokagon Band;
- BB. **“Pokagon Trust Lands”** means lands held in trust by the United States of America for the Pokagon Band of Potawatomi Indians.
- CC. **“Presenting Officer”** means any Attorney who is authorized to represent the Band in a matter under this Code, including child custody matters in state court or transferred to the Tribal Court pursuant to the Indian Child Welfare Act or state law.
- DD. **“Protective Custody”** means the status of being held under authority of law to prevent harm to the individual being held in protective custody.
- EE. **“Putative Father”** means the alleged or reputed father of a child born out of wedlock.
- FF. **“Qualified Expert Witness”** means, as used in child custody proceedings under this Code and under the Indian Child Welfare Act, a person with the following characteristics:

1. a member of the Pokagon Band or, if the child is not a Pokagon Child, a member of the child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child-rearing practices;
2. substantial experience in the delivery of child and family services to Native Americans and extensive knowledge of prevailing social and cultural standards in child-rearing practices within the child's tribe; and
3. a professional person with extensive education and experience in the area that testimony and opinion will be offered by such person.

GG. **“Service Area”** means the territory identified in the Pokagon Band Restoration Act, 25 U.S.C. § 1300j-6, which is comprised of Allegan, Berrien, Van Buren and Cass counties in Michigan and La Porte, St. Joseph, Elkhart, Starke, Marshall and Kosciusko counties in Indiana.

HH. **“Tribe”** or **“Tribal”** means the Pokagon Band of Potawatomi Indians.

II. **“Tribal Council”** means the elected governing body of the Pokagon Band of Potawatomi Indians with authority to exercise the legislative and executive powers of the Pokagon Band pursuant to the Pokagon Band governing documents.

JJ. **“Tribal Court”** or **“Court”** means the Tribal Court of the Pokagon Band of Potawatomi Indians, which is a court of general jurisdiction over all causes of action within the territorial jurisdiction of the Pokagon Band except as may be limited by Tribal or Federal law.

KK. **“Tribal Court Code”** means the Pokagon Band of Potawatomi Indians Tribal Court Code.

LL. **“Tribal Holiday”** means any day of the year established as an official holiday by the Tribal Council or by any other lawful Tribal authority, thereby resulting in the closure of Tribal government offices, including the Tribal Court, for the duration of a normal business day.

MM. **“Tribal Police Department”** or **“Tribal Police”** means the Tribal agency authorized to keep the peace and enforce Tribal law within the territorial jurisdiction of the Tribe. Where this Code assigns a specific role, duty, or responsibility to the Tribal Police Department, the Captain of the Tribal Police shall be accountable regarding the fulfillment of that role, duty, or responsibility provided, however, that other persons within the Police Department to whom the Captain has expressly delegated authority may fulfill such role, duty, or responsibility on the Captain's behalf in the absence or unavailability of the Captain.

NN. **“Ward”** means a Child who has been adjudicated a Child-In-Need-Of-Protection, or a Child for whom the Tribal Court has appointed a Guardian, Conservator or Juvenile

Guardian, and over whom the Tribal Court has asserted jurisdiction. A Child-In-Need-Of-Protection and any Child for whom the Tribal Court has appointed a Guardian or Conservator is a temporary ward of the Tribal Court until the time the case is dismissed and jurisdiction terminates. A Child-In-Need-of Protection for whom the Tribal Court has appointed a Juvenile Guardian may be a temporary or permanent Ward of the Tribal Court. A Child for whom a Juvenile Guardian has been appointed shall remain a Ward of the Court until the Court terminates the Juvenile Guardianship. In cases where parental rights have been terminated, except as may otherwise be provided by Tribal Court order, or this Code, the Child is a permanent Ward of the Tribal Court until the Child is lawfully adopted or emancipated.

Section 4. Jurisdiction of the Court

- A. The Tribal Court shall have jurisdiction over the following persons in proceedings commenced under this Code:
 - 1. any Pokagon Child residing in the Service Area and members of the child's household;
 - 2. any child custody proceeding transferred to Tribal Court pursuant to the Indian Child Welfare Act or state law;
 - 3. any child residing within Pokagon Trust Lands, and members of the child's household; and
 - 4. any person within Pokagon Trust Lands who is alleged to have caused any child residing within said lands to become a child-in-need-of-protection.
- B. Once the Tribal Court asserts jurisdiction over a person, the Tribal Court may retain jurisdiction over that person even if the person leaves the physical boundaries of the Pokagon Trust Lands.
- C. Except as otherwise expressly provided in this Code, Jurisdiction, once exercised by the Tribal Court over a proceeding involving a Child, is continuing and exclusive unless the Tribal Court enters an order terminating its jurisdiction or transferring jurisdiction to another court.

Section 5. Officers of the Tribal Court

- A. Presenting Officer. The Presenting Officer:
 - 1. is authorized to represent the Band in proceedings arising under this Code and proceedings in state courts under the Indian Child Welfare Act;
 - 2. may provide legal counsel to the Family Welfare Commission and the Department of Social Services with respect to matters under this Code; and

3. may make recommendations to the Department of Social Services, the Family Welfare Commission, and the Tribal Council regarding amendments to this Code.
- B. Counsel for Parents. The Tribal Court shall have discretion to appoint an attorney to represent the parents, guardian, or custodian at any stage of proceedings and the assistance of counsel will be paid for by the Band if the parents are indigent, according to criteria established by the Tribal Court. Every counsel for parents appointed by the Tribal Court shall be an attorney admitted to practice before the Tribal Court.
1. *Guardians Ad Litem*. At any stage of a proceeding conducted under this Code, the Tribal Court may, in its discretion, appoint a guardian *ad litem* for the child. The guardian *ad litem* shall be an attorney who is admitted to practice before the Tribal Court.
 2. *Duties of the Guardian Ad Litem*. Where the Tribal Court, in its discretion, has appointed a guardian *ad litem*, that person shall perform the following duties:
 - a. appear at all hearings to competently represent the interests of the child;
 - b. make an independent evaluation, as necessary, to ascertain the facts and circumstances underlying any allegation that the child is in-need-of-protection;
 - c. ascertain the interests of the child, taking into consideration the child's wishes according to the competence and maturity of the child;
 - d. provide written reports of findings and recommendations as requested by the Tribal Court;
 - e. urge that specific and clear orders are entered for evaluation, assessment, services and treatment for the child and his or her Immediate Family;
 - f. in consultation with the Department of Social Services, monitor the implementation of case plans and disposition orders to determine whether services ordered by the Tribal Court are actually provided, are provided in a timely manner, and are accomplishing their desired goal;
 - g. in coordination with the Department of Social Services, inform the Tribal Court if the services are not being made available to the child and/or Immediate Family, if the Immediate Family fails to take advantage of such services, or if such services are not achieving their purposes; and
 - h. coordinate with the Department of Social Services and other service providers in advocating 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 Tribal Court.

Section 6. Department of Social Services

The Department of Social Services is authorized and responsible, as expressly provided throughout this Code, to administer the Pokagon Band's protective services and child welfare laws and to establish such programs as are necessary to carry out its purposes. Where this Code assigns a specific role, duty, or responsibility to the Director of the Department of Social Services, the Director of the Department of Social Services shall be accountable regarding the fulfillment of the role, duty, or responsibility provided, however, that other persons within the Department of Social Services to whom the Director has expressly delegated authority may fulfill such role, duty, or responsibility on the Director's behalf in the absence or unavailability of the Director. In addition, the Department of Social Services shall have the following authority in order to achieve the purposes of this Code:

- A. **Cooperation and Grants.** The Department is authorized to cooperate fully with any federal, state, tribal, public 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;
- B. **Social Services.** The Department is authorized to utilize such social services as may be furnished by any tribal, federal, or state agency provided that it is economically administered without unnecessary duplication and expense and meets the standards stated in this Code; and
- C. **Contracts.** The Department may, at the direction of the Tribal Council, assist in establishing agreements and contracts with public and private entities to delegate investigative and other responsibilities when necessary, for the care and placement of children who are wards of the Tribal Court, and to achieve other purposes of this Code and the Pokagon Band regarding child welfare.
- D. The Department of Social Services shall maintain a central registry of reports, investigations and evaluations made under this Code. The registry shall contain all information regarding suspected child abuse or neglect of any child under Pokagon Band jurisdiction. Such information shall be preserved in the central registry until the child concerned reaches eighteen (18) years of age, unless the Tribal Court orders the child's records to be preserved for a longer period of time to assist with the protection of other siblings or for other purposes. Information maintained in the central registry shall be confidential and may be disclosed only to tribal, state and federal agencies who demonstrate a need for such information for child protection and child welfare purposes. The decision regarding what information may be disclosed and to whom it may be disclosed shall be subject to the sole determination of the Director of the Department of Social Services absent a lawful order from a court of competent jurisdiction. A request for the release of information must be submitted in writing, and such request and its approval shall be made a part of the child's file.

Section 7. Protective Services

The Department of Social Services shall provide protective services in accordance with the requirements set forth below. Protective Services shall include:

- A. Reviewing information regarding a child who may be a child-in-need-of-protection;
- B. Promptly initiating or causing to be initiated an investigation upon receipt of information regarding a child in need of protection within the jurisdiction of the Band to determine 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;
- C. Seeking the assistance of, and cooperating with, tribal, state or other law enforcement officials upon having probable cause to believe that:
 - 1. a child has been or is being subjected to abuse or neglect; or
 - 2. law enforcement intervention is necessary for the protection of a child, the Protective Service Worker, or another person involved in the investigation.
- D. Maintaining a written record of the investigation that includes, at a minimum, specific facts, dates, witnesses, and whether there is probable cause to believe that a child is a child-in-need-of-protection;
- E. Assisting the Tribal Police and other law enforcement authorities in taking a child into temporary custody if necessary pursuant to Section 17;
- F. Assessing the risk to other children in the home;
- G. Offering or recommending to the Immediate Family of any child found to be a child-in-need-of-protection appropriate social services available through tribal, state, federal, or local social services programs;
- H. Within thirty (30) days after a receiving information of a potential child-in-need-of-protection, submitting a written report of the investigation with recommendations to the Director of Social Services; and
- I. Informing the Director of the Department of Social Services of any information received that provides probable cause to believe that a pregnant woman residing within Pokagon Trust Land is abusing alcohol or using a controlled substance, and, in consultation with the Director, arranging or recommending to such person an appropriate assessment and offer of available services. Services offered may include, but are not limited to, a referral for chemical dependency assessment, a referral for chemical dependency treatment, if recommended, and a referral for parental care.

Section 8. Child Welfare

The Department of Social Services shall provide child welfare services within the authority and jurisdiction of the Pokagon Band and this Code. Where any child welfare services that are required to be performed by the Department of Social Services have been lawfully assigned to a state or state-authorized agency, the Department of Social Services shall monitor child welfare services being provided by such agency for compliance with this Code. Child Welfare Services shall include:

- A. ascertaining the interests of the child, taking into consideration the child's wishes according to the competence and maturity of the child;
- B. providing a written report of findings and recommendations as required by the Tribal Court;
- C. informing the Tribal Court if the services are not being made available to the child and Immediate Family, if the Immediate Family fails to take advantage of such services or if such services are not achieving their purpose; and
- D. serving as liaison to agencies of the Tribal or state governments on behalf of the child and Immediate Family to facilitate access to available services.

Section 9. Child Protection and Multidisciplinary Teams

- A. **Child Protection Team.** The Child Protection Team is technical and advisory in nature and shall serve to promote cooperation, communication, and consistency among Tribal agencies seeking to improve the Tribe's child protection services. Members of the Child Protection Team shall maintain confidentiality as to all information acquired through or for a Child Protection Team meeting. At least annually and on a case-by-case-basis as needed, the Director of the Department of Social Services shall convene a Child Protection Team meeting with Tribal employees and representatives the Director of the Department of Social Services deems appropriate, which may include the Presenting Officer and other Tribal Court officers; Department of Social Services Personnel; Health Services Personnel, such as doctors, nurse practitioners, nurses, and tribal substance abuse or mental health workers; and Tribal law enforcement personnel. The Director may also invite local, state, and federal personnel involved with child protection to participate on the Child Protection Team. The Director shall have discretion to determine which persons may serve on the Child Protection Team. The Child Protection Team shall collaborate in the development of systems for sharing information and for improving treatment strategies in an effort to fully achieve the purposes of this Code.
- B. **Multidisciplinary Team.** In cases involving allegations that may lead to criminal prosecutions, the Presenting Officer, the Director of Social Services, and the Captain of the Tribal Police shall communicate and decide, under appropriate protocol, on whether a case should be handled by civil or criminal process or whether the case should be referred for prosecution in Tribal Court or to the United States Attorney for federal prosecution. The Director of Social Services and the Tribal Police Captain may, at their discretion,

include other Tribal staff and representatives, and representatives from Federal and state law enforcement and social services agencies on the Multi-Disciplinary Team.

Section 10. Reporting and Investigating Child Abuse or Neglect

- A. Duty to Report/Coordination between Departments. With regard to cases arising on or within trust lands of the Band, any person who has reasonable cause to believe that a child is a child-in-need-of-protection shall immediately make a report to the Department of Social Services or the Tribal Police Department. Under protocols developed and approved by the Director of the Department of Social Services and the Captain of the Tribal Police Department, each Department shall immediately notify the other when such a report is made and shall, within thirty-six (36) hours of the receipt of such report provide the other with a written report that complies with the requirements of subsection D.
- B. Persons Specifically Required to Report. The following persons, upon having a reasonable basis to suspect that a child may be a child-in-need-of-protection, are specifically required to report child abuse and neglect:
1. all tribal employees;
 2. physicians, nurses, dentists, optometrists, community health representatives, counselors and therapists, and other medical or mental health professionals;
 3. volunteers working with families;
 4. school administrators, , school teachers, and other school personnel and officials;
 5. social workers and other social service agency personnel;
 6. child daycare center workers, residential child care workers, and other child care staff;
 7. foster parents and guardians;
 8. law enforcement officers and officials; and
 9. members of the Family Welfare Commission and members of the Child Protection Team shall immediately report the suspected condition to the Department of Social Services or the Tribal Police Department.
- C. A person mandated to report under subsection B who knows or has reason to suspect that a woman residing within Pokagon Trust Land is pregnant and has abused alcohol or used a controlled substance for a non-medical purpose during pregnancy shall immediately report the information to the Department of Social Services.

- D. A written report of child abuse or neglect prepared pursuant to subsection A shall provide the following information, if available:
1. names, addresses, and tribal affiliation of the child and his or her parents, guardian, or custodian including the enrollment numbers of such persons;
 2. the child's birth date and gender;
 3. the grade and school in which the child is currently enrolled;
 4. all facts and circumstances regarding the suspected abuse or neglect;
 5. previous history of abuse or neglect of the child and siblings;
 6. the name, age, and address of the person(s) alleged to have abused or neglected the child; and
 7. the name and address of the person making the report.
- E. Upon receipt of a report alleging that a child is a child-in-need-of-protection, the agency that received the report shall immediately initiate an investigation of such allegation and shall take immediate, appropriate steps to secure the safety and well-being of the child or children involved. Upon completion of the investigation, such agency shall prepare a final written report on such allegation.
- F. Waiver of Parental Consent to Examinations and Interviews. If the Department of Social Services or the Tribal Police Department has probable cause to believe a child is a child-in-need-of-protection, photographs, x-rays, medical examinations, psychological examinations, and interviews of such child shall be allowed without the consent of the parent, guardian, or custodian and shall be conducted under circumstances and with safeguards that are designed to minimize additional trauma to the child.
- G. Abrogation of Privilege. 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 protection proceeding resulting from a report made pursuant to this Code.
- H. The identity of a person making a report pursuant to this Section shall be kept confidential by the Department of Social Services and the Tribal Police Department and is subject to disclosure only with the consent of that person or by order of a court of competent jurisdiction. All persons or agencies reporting, in good faith, known or suspected instances of abuse or neglect shall be immune from civil liability and criminal prosecution.

Section 11. General Provisions Regarding Proceedings Under This Code

A. Nature of Child Protection Proceedings. Child protection and child welfare proceedings in Tribal Court are civil proceedings arising under this Code pursuant to the jurisdiction of the Band to adjudicate matters pertaining to the health, welfare, and safety of the Band and its members. Child protection and child welfare proceedings are intended to further the best interests of the children who are the subject of the proceedings, the best interests of their Immediate Family and Extended Family, and the best interests of the Pokagon Band or other Indian tribes with whom such children are affiliated.

B. Closed Proceedings. All proceedings in Tribal Court arising under this Code or otherwise concerning matters of child welfare or child protection shall be considered closed to the public. Access to such proceedings shall be limited to the following persons or entities:

1. parties to the proceeding recognized as such by the Court, including the child who is the subject of the proceeding, the child's parents, guardian, or custodian, and the Presenting Officer;
2. attorneys for the parties, including any Guardian *Ad Litem* appointed by the Court;
3. the Director and any staff of the Department of Social Services or any state agency or state-authorized agency who are actively involved in the matter, including child welfare workers and child protection workers;
4. Tribal Police and state or local law enforcement officers if the matter involves or may involve criminal violations;
5. fact witnesses and expert witnesses called by the Court or by a party under the authority of the Court to testify in the proceeding;
6. tribal Court officers and personnel; and
7. Any other person or entity authorized by the Tribal Court to be present at the proceeding.

C. Rules of Evidence.

Formal Rules Do Not Apply. The formal rules of evidence enacted into Pokagon Band statutory law shall not apply at these proceedings. The Tribal Court may establish rules of evidence applicable to proceedings under this Code provide that such rules are not in conflict with this Code or with Pokagon Band governing law. All relevant and material evidence, which is reliable and trustworthy, may be admitted at the trial and may be relied upon by the Tribal Court to the extent of its probative value.

D. Rights of Parties.

1. Witnesses and Reports. The parties shall be afforded an opportunity to call witnesses

and to cross-examine witnesses, examine and challenge the information and conclusions in any written reports received by the Tribal Court, and examine or cross-examine the authors of such reports and any individuals who provided information contained in the reports.

2. **Child Witnesses.** If the Tribal Court determines that it is in the best interests of the child and does not violate the rights of a party, the Court may allow a child to testify by closed circuit television, videotaped deposition, or other suitable method outside the courtroom and the presence of any parties subject to allegations of abuse or neglect. The decision by the Tribal Court to allow a child to testify in a proceeding through the methods described in this subsection shall be made by written order, which shall set forth findings of fact and all reasons supporting the decision.
 3. **Speaker Telephones.** The Tribal Court, at its discretion, may allow the use of telephonic and video conferencing technology or other electronic communication devices to allow parties unable to appear at a proceeding to participate; provided that the use of such devices does not deprive another party of any rights under Tribal law.
- E. **Burden of Proof.** Unless this Code expressly makes a different standard of proof applicable to a particular proceeding, the party asserting allegations in a proceeding under this Code has the burden of proving such allegations by a preponderance of the evidence.
- F. **Full Faith and Credit.** The Tribal Court shall give full faith and credit to the judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts of other courts as provided in subsection 7(f) of the Pokagon Band Tribal Court Code.
- G. **Visitation by Grandparents and Other Family Members.**
1. Subject to all other requirements of this Code, a grandparent or other member of the Immediate Family or the Extended Family of a child who is a Tribal Court ward shall be entitled to reasonable visitation with the child during any period that the child is not in the custody of a parent unless the Court finds that such visitation is not in the best interest of the child or that such visitation is likely to interfere with a Case Service Plan or a Disposition Order or other Court order regarding the child.
 2. Any person described in subsection 1 who seeks an order granting visitation rights with a child who is a Tribal Court ward shall initiate such request by filing a petition for visitation accompanied by an affidavit of all supporting facts. The Tribal Court may consolidate the proceeding on a Petition for Visitation with any pending proceeding involving the child. Absent a Tribal Court order to the contrary, reasonable supervised or unsupervised visitation with the child by a person described in subsection 1 may be allowed at the discretion of the Department of Social Services or any state or state-authorized agency involved in the proceeding provided that any guardian *ad litem* appointed for the child concurs in the visitation.
 3. The termination of parental rights shall not affect the visitation rights of a person

described in subsection 1 unless the Tribal Court finds that such visitation is not in the best interest of the child or that such visitation would interfere with the goals of permanency planning for the child.

4. Visitation may be supervised or unsupervised and, where appropriate and feasible, may take place in the home of the person allowed visitation or granted visitation rights. A person allowed visitation or granted visitation rights may be required by the authorizing agency or the Tribal Court to pay transportation and other incidental expenses for any visitation that takes place in such person's home.
5. Any attempt by a person who has been allowed visitation or granted visitation rights to facilitate a meeting between the child and any other person in knowing violation of a Tribal Court order shall result in the automatic termination of such person's future visitation rights.

Section 12. Service of Summonses, Subpoenas, Notices, and Other Documents

A. Summons.

1. Content of Summons. Except as provided otherwise in this Code or by Tribal Court order, every summons must:
 - a. identify the nature of proceeding;
 - b. direct the appearance of the parents, guardian, or custodian at such proceeding or the production of records;
 - c. notify them of their rights and shall include, if applicable, a prominent notice that the proceedings could result in the termination of their parental or other rights relating to the child;
 - d. set forth the time, date, and place of the hearing; and
 - e. have attached to it a copy of the petition, report, notice of hearing, and any other documents filed or to be filed with the Tribal Court along with the Summons in the proceeding.
2. Time for Service of Summons. Unless a shorter period of time is allowed under this Code for a particular proceeding, the Summons shall be served upon the child's parent, guardian, or custodian:
 - a. at least fourteen (14) days prior to the date of any hearing on a Petition for Child Protection, except a Preliminary Hearing, a hearing on a Petition for Termination of Parental Rights, or a hearing on a Petition for Adoption; and
 - b. at least seven (7) days prior to all other hearings.

3. Manner of Serving Summons. A Summons shall be served as follows:
 - a. Personal Service. Except as provided below or elsewhere in this Code, a Summons required under this Section shall be served by delivering the Summons personally to the named party.
 - b. Service by Mail. If personal service of the Summons is impractical or cannot be achieved within the required time, the Tribal Court may authorize service by registered or certified mail addressed to the last known address of the party, return receipt requested, and restricted to the addressee.
 - c. Substituted Service. The Tribal Court may authorize any manner of substituted service, including publication, if service cannot be made because the whereabouts of the person to be summoned has not been determined after reasonable effort has been made.

B. Subpoenas.

1. Content of Subpoenas. Except as provided elsewhere in this Code, every subpoena must:
 - a. identify the proceeding;
 - b. direct the appearance of a person or the production of records, or both, at such proceeding; and
 - c. set forth the time, date, and place of the hearing.
2. Time for Service of Subpoena. Unless a shorter period of time is allowed under this Code or by Tribal Court order for a particular proceeding, the Subpoena shall be served upon the named person at least seven (7) days prior to the hearing.
3. Manner of Serving Subpoena. A subpoena shall be served as follows:
 - a. Personal Service. Except as provided below or elsewhere in this Code, a subpoena shall be served by delivering the Subpoena personally to the named person.
 - b. Service by Mail. If personal service of the Subpoena is impractical or cannot be achieved within the required time, the Tribal Court may authorize service by registered or certified mail addressed to the last known address of the party, return receipt requested, and restricted to the addressee.

C. Notice of the Hearing.

1. Time for Service of Notice. Unless a shorter period is allowed under this Code for particular proceedings, a notice of any hearing held pursuant to this Code shall be served on the parents, guardian, or custodian, and on all other interested parties within the following timeframes:
 - a. no later than fourteen (14) days prior to the date of any hearing on a Petition for Child Protection, except a Preliminary Hearing, a hearing on a Petition for Termination of Parental Rights, or a hearing on a Petition for Adoption; and
 - b. seven (7) days prior to all other hearings.
2. Persons Entitled to Notice. The following persons or entities shall be served with the Petition and Notice of any hearing prior to the date of the hearing:
 - a. the parent(s) or the attorney for the parent(s), if any;
 - b. the guardian *ad litem* for the child, if any;
 - c. the legal guardian or custodian of the child, other than the parent, if any;
 - d. the Department of Social Services and any state agency or state-authorized agency involved in the case;
 - e. the court clerk of the child's tribe if different from the Band; and
 - f. any other person or entity the Tribal Court may direct be notified.
3. Manner of Serving Notice.
 - a. A Notice of Hearing regarding the Initial Hearing shall be served as follows:
 - (i) Personal Service. Except as provided below or elsewhere in this Code, a Notice of Hearing shall be served by delivering the Notice personally to the named person.
 - (ii) Service by Mail. If personal service of the Notice of Hearing is impractical or cannot be achieved within the required time, the Tribal Court may authorize service by registered or certified mail addressed to the last known address of the party, return receipt requested, and restricted to the addressee.
 - b. Except as provided otherwise in this Code or by the Tribal Court, a Notice of Hearing regarding any hearing following the Initial Hearing in a proceeding under this Code may be served either by personal service or by first class mail, postage prepaid.

D. Other Documents. Except as provided otherwise in this Code or by Tribal Court order,

persons entitled to service of any other document in a proceeding under this Code other than those specifically identified in this Section may be served either by personal service or by first class mail, postage prepaid, at least three (3) days prior to the date of any hearing at which such document may be considered.

E. Waiver of Notice or Service. Any person or entity entitled to service of a summons, subpoena, notice of a hearing, or other document may waive the time requirements for service of process provided that the waiver is in writing or is made orally on the record in Tribal Court.

F. Time.

1. Computation of Time. In computing any period of time prescribed or allowed by this Code, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a Tribal holiday, or, when the act to be done is the filing of a paper in Tribal Court, a day on which weather or other conditions have made the Tribal Court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and Tribal holidays shall be excluded in the computation.
2. Enlargement of Time. When an act is required or allowed to be done at or within a specified time by this Code, the Tribal Court may at any time in its discretion, for good cause shown, with or without notice order the period of time enlarged if a motion is made before the expiration of the specified period or, if a motion is made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect.
3. Motions. A written motion and notice of the hearing on the motion shall be served not later than five (5) days before the time specified for the hearing, unless a different period is prescribed in this Code or by Tribal Court order.
4. Service by Mail. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three (3) days shall be added to the prescribed period.

Section 13. Putative Fathers

A. If at the first appearance of the parties in any child protection proceeding or any other proceeding involving child welfare or child custody under this Code, no father has appeared, the Tribal Court shall proceed as follows:

1. Evidence of Putative Father. The Tribal Court shall inquire of the Presenting Officer or any party or witness whether an identifiable person may be the natural father of the

child, and if there is probable cause to believe that an identifiable person is the father and such person has not been served, the Court shall direct that notice be served on that person in the manner provided in this Section. In addition to all other requirements in this Section regarding Notice of the proceeding and Summons, the notice to the putative father shall include a statement that failure to attend the hearing will constitute a denial of interest in the child, a waiver of notice for all subsequent hearings, and could result in termination of any alleged parental rights. If the putative father appears before the Court at the time and place specified, the Court shall proceed to determine paternity under tribal law.

2. No Evidence of Putative Father. If, after inquiry there is no evidence of a putative father, the Tribal Court shall direct that notice be published in a manner calculated to alert a person who may be the father of the child.
3. Waiver of Rights. The Tribal Court may find that the natural father waives all rights to notice, including the right to notice of termination of parental rights, and the right to legal counsel if:
 - a. he fails to appear after proper notice; or
 - b. he appears, but fails to establish paternity within the time set by the Tribal Court.

Section 14. Placement of Children

- A. General Policy: Active Efforts Required. Prior to removal of a child from a home, except where an emergency exists, the Department of Social Services and, as appropriate, the Pokagon Band Health Department shall make active and reasonable efforts to provide to the child's parent, guardian, custodian, and other parties involved in the child's care and custody remedial services and rehabilitative programs, designed to prevent the breakup of the family.
- B. Restrictions. A child alleged to be a child-in-need-of-protection 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.
- C. Placement Preferences. In placing a child removed from his or her home, every effort shall be made to place the child within reasonable proximity to such home within the Service Area, in the least restrictive setting which most approximates a family, and in which his or her special needs, if any, may be best met.
 1. Preference shall be given, in the absence of good cause to the contrary, to the following placements, which are listed in order of preference:
 - a. the home of a parent or stepparent, excluding an unwed father whose paternity has not been lawfully established;

- b. the home of an adult member of the child's Immediate Family, excluding those persons described in subsection a;
 - c. the home of an adult member of the child's Extended Family;
 - d. a licensed foster home;
 - e. a facility operated by a licensed Indian child welfare services agency; or
 - f. any other suitable placement, which meets the standards for shelter care facilities established by Tribal law.
2. Subject to the preferences stated in subsection 1, priority shall be given to placements in homes of the following persons, which are listed in order of priority:
- a. an enrolled member of the Pokagon Band;
 - b. an enrolled member of a Potawatomi tribe other than the Pokagon Band, an Ottawa tribe, or a Chippewa tribe;
 - c. an enrolled member of any other Indian tribe, band or group;
 - d. the home of any other person.
3. In applying the preferences stated in this subsection C, consideration shall not be given to the home of a person from whose custody the child was removed, a parent whose parental rights have been terminated, a person who is a subject of the allegations or investigation concerning the abuse or neglect of the child, and a person who resided for any period of time in the child's home during the time that the child abuse or child neglect is believed to have occurred.

D. Good Cause.

1. Definition. As used in subsection 14.C and in 25 U.S.C. § 1915 for proceedings under the Indian Child Welfare Act, the term "good cause" requires a judicial determination based on one or more of the following considerations:
- a. a request to deviate that comes from the biological parents or the child, provided he or she is of "sufficient" age and maturity;
 - b. extraordinary physical or emotional needs of the child as established by qualified expert testimony; or
 - c. the unavailability of a suitable family after a diligent search for a family that meets the placement preferences.

2. Burden of Establishing Good Cause to the Contrary. The burden of establishing the existence of good cause not to follow the preferences stated in subsection 14.C shall be on the party urging that the preferences not be followed.

E. Licensed Homes or Facilities. A child removed from his or her home shall, to the greatest extent possible, only be placed in a home or facility that is licensed to provide foster care services except when a temporary placement is made on an emergency basis with a member of the child's Immediate Family or Extended Family pending a hearing. In order for a home to be eligible for the placement of a child, the residents of the home shall cooperate with inspections and evaluations of the home and its residents required by applicable laws or regulations, including criminal and other background investigations and a release of all relevant records from public and private agencies.

Section 15. Removal Orders

In every child protection proceeding in Tribal Court, the first Court order authorizing or directing the removal of a child from his or her home, including an order on an Emergency Petition confirming a removal without a Court order, shall conform to the following requirements:

- A. there must be an judicial determination that "it is contrary to the welfare of the child to remain in his or her home";
- B. there must be a judicial determination that reasonable efforts were made to prevent removal of the child from the home or that the lack of such efforts was reasonable under the circumstances, such as the existence of an imminent threat of harm to the child in the home;
- C. the judicial determinations must be explicit and case specific and shall be supported by findings of fact; and
- D. the order shall identify all evidence supporting the determinations, which may be by reference to a petition, report, or testimony in the record of the proceeding, provided that any testimony used to support a determination shall either be clearly identified in the order or a copy of a transcript of the testimony must be attached to the order.

Section 16. Transfers of Jurisdiction

- A. Transfer to Other Courts. In any proceeding before the Tribal Court, the Court may transfer the proceedings to an appropriate state court or another tribal court when the state or the other Indian tribe has a significant interest in the child and the transfer would be in the best interest of the child, provided that such other court first accepts jurisdiction and may lawfully exercise jurisdiction in the entire matter that is the subject of the transfer order.
- B. Transfer from Other Courts. The Tribal Court may accept or decline, under the procedures set forth in this Code, transfers of child welfare or child protection

proceedings from federal, state or other tribal courts.

Section 17. Intervention In and Transfer From State Court

- A. Receipt of Notice. The Director of the Department of Social Services shall be the agent for service of official notice of any state court proceedings involving a Pokagon Child that are subject to the Indian Child Welfare Act. Employees of the Department of Social Services and other Tribal government employees or representatives who become aware that a Pokagon Child is involved in a state court proceeding that is subject to the Indian Child Welfare Act shall promptly provide the Director of the Department of Social Services with a written notice regarding the proceeding.
- B. Distribution of Notices. The Director of the Department of Social Services shall provide copies of any notice to the Family Welfare Commission, the Tribal Enrollment Office, and the Presenting Officer within three (3) days after receipt of such notice.
- C. Certification by the Tribal Enrollment Office. The Tribal Enrollment Office shall promptly, but not exceeding three (3) days from that date of its receipt of a copy of the notice described in subsection A, certify in writing to the Director of the Department of Social Services and the Presenting Officer a determination as to whether the child that is the subject of the notice is a Pokagon Child.
- D. Intervention. Intervention in all state court proceedings subject to the Indian Child Welfare Act is favored absent good cause to the contrary. The Presenting Officer shall, absent good cause to the contrary, file a motion to intervene with the state court as soon as possible, but not more than eleven (11) days after receiving certification by the Tribal Enrollment Office that the child is a Pokagon Child.
- E. Investigation and Report. The Department of Social Services shall promptly conduct an investigation with respect to the factors stated in subsection E and shall file a written report with the Family Welfare Commission and the Presenting Officer. The report shall include recommendations regarding the proper course of action for the Pokagon Band in the proceeding, including whether or not transfer should be sought, and facts and analysis to support the recommendations.
- F. Decision to Petition for Transfer. Upon review of the Report of the Department of Social Services, the Family Welfare Commission shall make written recommendations to the Presenting Officer on whether the Band should petition for transfer of the child custody proceeding from the state court. The Family Welfare Commission shall consider the following factors in making its recommendation:
 - 1. the best interests of the child;
 - 2. the best interests of the Immediate Family;
 - 3. the best interests of the Band;

4. the availability of services from the Band for the child and his or her Immediate Family;
 5. prospects for permanent placement for the child; and
 6. conservation of tribal resources.
- G. Request for Hearing. If the Department of Social Services and the Family Welfare Commission recommend transfer of the case to Tribal Court from the state court and the Presenting Officer concurs in the recommendation, the Presenting Officer shall promptly petition the Tribal Court for a hearing on the recommendation. If the recommendations of the Department of Social Services and the Family Welfare Commission are inconsistent or if the Presenting Officer does not concur in the recommendations, the Director of the Department of Social Services shall set a meeting to seek resolution of the issues.
- H. Tribal Court Hearing on Transfer Recommendation. The Tribal Court shall conduct a hearing to determine if the Court should accept transfer prior to the filing of a Petition for Transfer with the state court. The Tribal Court shall consider, in addition to the factors set forth in subsection E the following additional factors:
1. the recommendations of the Department of Social Services and the Family Welfare Commission; and
 2. the jurisdiction of the Tribal Court over the proceeding.
- I. Tribal Court Discretion. The Tribal Court has discretion to accept or decline the recommendations of the Department of Social Services and the Family Welfare Commission regarding transfers of a child custody proceeding from a state court. The hearing on whether to accept transfer shall be conducted prior to dismissal of the matter in state court.
- J. Authority under Section 33. At the hearing on whether to accept transfer, the Tribal Court shall advise the parents, guardian, or custodian of the authority of the Tribal Court pursuant to Section 33 of this Code and the potential consequences thereof.
- K. Petition for Transfer. The Presenting Officer shall promptly file a Petition for Transfer of the child custody proceeding with the state court upon receipt of the Tribal Court's decision to accept a transfer of the proceeding to Tribal Court.
- L. Hearings upon Transfer. Upon receipt of transfer of jurisdiction from state court, the Tribal Court shall hold appropriate hearings in accordance with this Code.

Section 18. Emergency Removal for Protective Custody and Emergency Medical Treatment

A. Emergency Petitions for Protective Custody.

1. **Standard for Emergency Removal.** Except when the standard under subsection B for Emergency Removal without a Tribal Court Order has been met, the Department of Social Services shall prepare or, with the assistance of the Presenting Officer, cause to be prepared an Emergency Petition seeking a removal order from the Tribal Court to take a Pokagon Child into protective custody in all cases where there is probable cause to believe that:
 - a. the child is a child-in-need-of-protection;
 - b. it is contrary to the welfare of the child to remain in his or her home; and
 - c. there is a substantial risk of harm to the child if the child is not promptly taken into protective custody.
2. **Contents of an Emergency Petition.** The Emergency Petition shall include all available and applicable information required in a Child Protection Petition.
3. **Preparation and Filing of the Emergency Petition.** The Department of Social Services shall, by 12:00 p.m. on the first day following the day a determination is made by the Department of Social Services that the standard for an Emergency Removal under this Subsection has been met, prepare and file with the Tribal Court an Emergency Petition for Protective Custody. The Presenting Officer shall assist the Department of Social Services as needed.
4. **Service of the Emergency Petition.** Every reasonable effort shall be made to serve the Emergency Petition on the parents, guardian, or custodian by personal service promptly after the Emergency Petition is filed with the Tribal Court and before any hearing. A Notice of Hearing and Summons prepared by the Tribal Court that compels the attendance of the parents, guardian, or custodian at the hearing may be served along with the Emergency Petition. If no parent, guardian, or custodian can be located, the Petition, Notice, and Summons shall be personally served on any adult residing in the same home as the child. If no adult resident is found therein, the Petition, Notice and Summons shall be left in a prominent place at the home and every reasonable effort shall also be made to serve any known adult member of the child's Immediate Family.
5. **Hearing on the Emergency Petition.** The Tribal Court shall conduct a hearing on the Emergency Petition by 12:00 pm on the first day after the Emergency Petition is filed with the Tribal Court. The Tribal Court shall evaluate the Emergency Petition and receive any testimony and other evidence offered in support of the Emergency Petition. The Tribal Court may prevent the parents, guardian, or custodian and other

interested parties, including their legal counsel, from hearing any testimony concerning the temporary placement or custody of the child if the Tribal Court determines that the child may face a risk of harm if such information becomes known to those persons.

6. *Ex Parte* Hearings. The Tribal Court may only conduct an *ex parte* hearing following a showing to the satisfaction of the Tribal Court that every reasonable effort was made to obtain service on the parents, guardian, or custodian of the child and any other interested parties not in attendance at the proceeding and an inquiry as to why the attendance of such persons at the hearing could not otherwise be obtained.
7. Notice Following Removal. Notice to the Presenting Officer and the Tribal Court. After a child is removed from his or her home by Tribal Court order, the Tribal Police shall advise the Tribal Court in writing no later than 12:00 p.m. on the first day following removal that the order has been complied with, what problems, if any, were encountered in removing the child, who has custody of the child and where the child is located.

B. Emergency Removal Without a Tribal Court Order.

1. Standard for Emergency Removal Without a Tribal Court Order. Removal of a child for protective custody without a Tribal Court order shall not occur unless diligent efforts have first been made to obtain an Emergency Order from the Court and then only upon a determination by the Tribal Police made, if reasonable under the circumstances, in consultation with the Department of Social Services that there is probable cause to believe that:
 - a. the child is a child-in need-of-protection;
 - b. it is contrary to the welfare of the child to remain in his or her home;
 - c. the child faces an imminent risk of substantial harm if not immediately taken into protective custody; and
 - d. no reasonable alternative means of protecting the child from harm other than immediate removal into protective custody are available while a Court order is sought.
2. Preparation of Removal Reports. The Tribal Police and the Department of Social Services shall, by 12:00 p.m. on the first day following the day an emergency removal without a Tribal Court order occurs, each prepare a report concerning the removal of the child without a Court order, which shall include all relevant facts and conclusions relied upon to support the decision to remove the child. The removal reports shall also include information concerning what problems, if any, were encountered in removing the child, who has custody of the child, and where the child is presently located except to the extent that the Tribal Police and the Department of

Social Services confer and determine that there is probable cause to believe that revealing such information to the parents, guardian, custodian, or other interested parties would create an undue risk of harm to the child. If a state social services agency was involved in the removal, the Department of Social Services shall be responsible for obtaining a report from the state agency in compliance with this provision.

3. Preparation and Filing of an Emergency Petition. The Department of Social Services shall, by 12:00 p.m. on the first day following the day an emergency removal without a Tribal Court order occurs, prepare and file with the Tribal Court an Emergency Petition concerning the child removed. The Presenting Officer shall assist the Department of Social Services as needed. The Emergency Petition shall seek an order confirming the removal and shall include all available and applicable information required in a Child Protection Petition, as described in Section 19 of this Code. The removal reports described in subsection B.2 shall be filed with the Tribal Court along with the Emergency Petition.
4. Service of the Emergency Petition. Service of the Emergency Petition shall comply with the requirements for service stated in subsection A.4. The report described in subsection B.2 shall also be served with the Emergency Petition.
5. Hearing on the Emergency Petition. The Tribal Court shall conduct a hearing on the Emergency Petition by 12:00 p.m. on the first day following the day an Emergency Petition is filed with the Court. The Tribal Court shall evaluate the Emergency Petition and receive any testimony and other evidence offered in support of the Emergency Petition.
6. Information Concerning the Location of the Child. The Tribal Court may prevent the parents, guardian, custodian, or other interested parties from receiving information, whether in written form or in testimony, concerning the custody or location of the child if the Court determines, based on the allegations in the Emergency Petition, that revealing such information would create an undue risk of harm to the child.
7. *Ex Parte* Hearings. The standards and procedures for conducting *ex parte* hearings under this subsection B shall comply with the requirements stated in subsection A.6.

C. Requirements for Emergency Orders for Removal and Orders Confirming Removal.

1. Every Emergency Order for Removal and Order Confirming Removal shall:
 - a. conform to the requirement of Section 15; and
 - b. include a determination, supported by findings of fact, that all other applicable standards for the removal have been met;
2. The Tribal Court shall, to the extent necessary or reasonable, include in any Order for

Removal an authorization to enter specified premises on a specified date to remove the child and a directive to place the child in protective custody in accordance with the placement preferences of Section 14.

3. Every reasonable effort shall be made to serve the order by personal service on the parents, guardian, or custodian within twelve (12) hours after it is issued. If no parent, guardian, or custodian can be located, the order shall be personally served on any adult residing in the same home as the child. If no adult resident is found therein, the order shall be left in a prominent place at the home and every reasonable effort shall also be made to serve any known adult member of the child's Immediate Family.

D. Grounds for Removal Corrected. The child may be returned to the parents, guardian, or custodian upon a motion filed with the Tribal Court by the parents, guardian, or custodian and supported by evidence satisfactory to the Court that the grounds for removal have been eliminated and the child is no longer a child-in-need-of-protection.

E. Removal of an Alleged Perpetrator. As an alternative to removal of a child to protective custody, the Tribal Court may, on petition filed by the Department of Social Services, order the removal of a person residing within the home of the child on a finding that there is probable cause to believe that such person is the cause of the abuse or neglect of the child. The Presenting Officer shall assist the Department of Social Services as needed. Except as otherwise provided by Tribal Court order, the procedural requirements for a proceeding initiated under this subsection shall, to the greatest possible extent, conform to the relevant procedural requirements set forth in subsection 18.A.

F. Notice of Removal.

1. Notice to the Presenting Officer and the Tribal Court. After a child is removed from his or her home without a Tribal Court order, the person who removed the child shall make diligent efforts to provide notice of the removal to the Presenting Officer and the Tribal Court within six (6) hours of the removal shall be documented.
2. Notice to Child's Indian Tribe if Different than Pokagon Band. If the Tribal Court asserts jurisdiction over a person who is a member of a federally-recognized Indian tribe, Band or Group, other than the Pokagon Band, the Tribal Court shall promptly notify such other tribe that jurisdiction has been asserted over a member of that tribe.
3. Notice to the Family Welfare Commission. The Department of Social Services and the Presenting Officer shall provide prompt notice of the removal to the Family Welfare Commission and shall seek its guidance regarding subsequent proceedings involving the child.

G. Emergency Petition for Medical Care.

1. Emergency Petition for Medical Care.

- a. Standard for Emergency Petition for Medical Care. Except when the standard under subsection G.2.a for Emergency Medical Care Without a Tribal Court Order has been met, the Department of Social Services shall prepare an Emergency Petition seeking an order from the Tribal Court authorizing the emergency medical care, including examination and treatment, of a child in protective custody in all cases where there is probable cause to believe that the child faces a substantial risk of harm if medical care is not promptly provided to the child. The Presenting Officer shall assist the Department of Social Services as needed.
 - b. Filing, Service of Process, and Hearing Procedures. Except as otherwise provided by Tribal Court order, the procedural requirements for a proceeding initiated under this subsection 18.G shall, to the greatest possible extent, conform to the relevant procedural requirements set forth in subsection 18.A.
2. Emergency Medical Care Without a Tribal Court Order.
- a. Standard for Emergency Medical Care Without a Tribal Court Order. Emergency medical examination and treatment without a Tribal Court order of a child in protective custody shall not occur unless diligent efforts have first been made to obtain an Emergency Order for medical care from the Tribal Court and then only upon a determination by the Tribal Police made, if reasonable under the circumstances, in consultation with the Department of Social Services that there is probable cause to believe that the child faces an imminent risk of substantial harm if medical care is not immediately provided to the child.
 - b. Notice to the Presenting Officer and the Tribal Court. After a child is provided medical care without a Court order, the person who sought medical care for the child shall make diligent efforts to provide notice of the emergency medical care to the Presenting Officer and the Tribal Court within six (6) hours of the time medical care is obtained.
 - c. Preparation of Reports Concerning the Emergency Medical Care. The Tribal Police and the Department of Social Services shall, by 12:00 p.m. of the first day after the day emergency medical care is obtained for a child without a Tribal Court order, each prepare a written report concerning the matter. The reports shall include all relevant facts and conclusions relied upon to support the decision to provide the child with emergency medical care without a Tribal Court order and a detailed description of all medical care provided to the child, such as medical evaluations, medications, surgical or other treatment. The reports shall have attached to them copies of all medical and other documents related to the medical care provided to the child. If a state social services agency was involved in providing the child with emergency medical care, the Department of Social Services shall be responsible for obtaining a report from the state agency in compliance with this provision.

- d. Preparation and Filing of Petition, Service of Process, and Hearing Procedures. Except as otherwise provided by Tribal Court order, the procedural requirements for a proceeding initiated under this subsection 18.G shall, to the greatest possible extent, conform to the relevant procedural requirements set forth in subsection 18.B. The Presenting Officer shall assist the Department of Social Services as needed.
3. Medical Costs. If no health service provider, including Indian Health Services or health insurance company, is responsible for payment of costs for medical treatment authorized under this Section, such costs shall be paid by the Tribal Court for children not in protective custody and by the Department of Social Services for children in protective custody. The Tribal Court may enter an order of reimbursement requiring the parents, guardian or custodian of a child to pay the medical costs incurred by the Pokagon Band in connection with any action taken pursuant to this Code, as set forth in Section 33.
4. Religious and Traditional Healing. In making any order authorizing medical treatment under this Section, the Tribal Court shall give due consideration to any health practices or treatment previously provided to the child in accordance with recognized tribal or other religions, customs or traditions.
5. Requirements for Orders Regarding Emergency Medical Care. Every order authorizing emergency medical care shall include a statement that it is contrary to the welfare of the child to be deprived of medical care and shall include all findings of fact supporting the determination that the standard for emergency medical care has been met. The Tribal Court shall specify the type of medical care that is ordered and, if reasonable, the identity of any medical facility or doctor authorized to provide an examination or treatment.

Section 19. Child Protection Petitions

A. Decision to File a Child Protection Petition.

1. Promptly after the completion of preliminary investigations regarding a possible child-in-need-of-protection by Tribal or state social service and law enforcement agencies and, if time permits, prior to filing a Child Protection Petition with the Tribal Court, the Department of Social Services and the Presenting Officer shall make diligent efforts to present the reports of such investigations to the Family Welfare Commission in order to obtain the Commission's recommendations.
2. The Director of the Department of Social Services may, with due consideration to any recommendations of the Family Welfare Commission, request that the Presenting Officer initiate formal child protection proceedings by filing a Child Protection Petition in Tribal Court on behalf of the Band. A Child Protection Petition shall be prepared and filed promptly, but not more than seven (7) days after the date the

Director of the Department of Social Services determines to initiate a child protection proceeding.

- B. Mandatory Petition Following an Emergency Removal. If the Tribal Court issues an order confirming a removal upon an Emergency Petition, the Presenting Officer shall file a Child Protection Petition within three (3) days of the date of the Tribal Court order authorizing the removal.
- C. Contents of Child Protection Petition. The Petition shall, to the extent such information is available, set forth the following with specificity:
1. the name, birth date, sex, address and tribal affiliation of the child;
 2. the basis for the Tribal Court's jurisdiction;
 3. the specific allegations which cause the child to be a child-in-need-of-protection;
 4. a plain and concise statement of the facts upon which the allegations that the child is a child-in-need-of-protection are based, including the date, time and location where the alleged facts occurred;
 5. the names, addresses and any tribal affiliation of the child's parents, guardians or custodians, 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 relatives residing in the same city or county as the child;
 6. the names, relationship and addresses of all known adult members of the child's Extended Family and all former care givers, if known;
 7. in those cases where the child has been removed from his or her home, the facts necessitating the removal, the date and time of the removal, and the agency with whom the child has been placed unless the Presenting Officer, following consultation with the Department of Social Services, determines that disclosure of the child's location will expose the child to a substantial risk of emotional or physical harm;
 8. the names, addresses, and telephone numbers of the Presenting Officer, Department of Social Services' staff, and the staff of any state or state-authorized agency assigned to the case;
 9. if any information required to be set forth by this Section cannot be obtained, a statement that such information was unavailable at the time the Petition was prepared and a description of the efforts to be undertaken to obtain such information; and
 10. the type of relief requested, including whether temporary or permanent custody is sought.

- D. Investigative Reports. All available investigative reports and any recommendations of the Family Welfare Commission pertaining to the case shall be appended to the Petition.
- E. Filing. The Petition shall be filed with the Tribal Court in accordance with the applicable rules of the Tribal Court.
- F. Service. Service of the Child Protection Petition shall be in accordance with the requirements of subsection 11.D of this Code.

Section 20. Preliminary Hearings

- A. Purposes. A Preliminary Hearing shall be conducted for the following purposes:
 - 1. to determine if probable cause exists to believe that the child is a child in need of protection, unless probable cause was established previously at a hearing on an Emergency Petition;
 - 2. to advise the parents, guardian, or custodian of the nature and purpose of the proceeding and of their rights;
 - 3. to provide the parents, guardian, or custodian an opportunity to enter a plea; and
 - 4. if the child is in protective custody, to determine whether there is an adequate alternative to protective custody to safeguard the child and, if not, whether the child should continue in his or her current placement.
- B. Requirement for a Preliminary Hearing. A Preliminary Hearing shall be conducted in all proceedings initiated by a Child Protection Petition provided, however, that if a proceeding was initiated by an Emergency Petition pursuant to Section 18, a Preliminary Hearing shall only be required if the hearing on the Emergency Petition was conducted on an *ex parte* basis and the parents, guardian, or custodian file a request for a Preliminary Hearing with the Tribal Court within five (5) days from the date of the order confirming removal.
- C. Time for Conducting the Hearing. The Tribal Court shall conduct a Preliminary Hearing within:
 - 1. two (2) days from the date a request for a Preliminary Hearing was filed with the Tribal Court if the child is in protective custody and the request is in compliance with the requirements of subsection B; or
 - 2. three (3) days from the date the Child Protection Petition is filed with the Tribal Court if the child is not in protective custody.
- D. Service of the Petition, Notice of Preliminary Hearing, and Summons. Diligent efforts

shall be made to serve the Petition for Child Protection, Notice of the Preliminary Hearing, and Summons by personal service on the parents, guardian, or custodian promptly after the Petition for Child Protection is filed with the Tribal Court but not later than twelve (12) hours prior to the time set for the hearing. If despite all reasonable efforts no parent, guardian, or custodian can be located, the Petition, Notice, and Summons shall be personally served on any adult residing in the same home as the child. Reasonable efforts shall include personal contact, and telephone and written contacts at the residence, place of employment, or other location where the parent, guardian, or custodian is believed to frequent. If no adult resident is found therein, the Petition, Notice, and Summons shall be left in a prominent place in the home and also served upon any known adult member of the child's Immediate Family.

- E. Parent, Guardian, or Custodian Not Present. If the child's parent, guardian, or custodian is not present at the Preliminary Hearing, the Tribal Court shall inquire into what efforts were made to notify and to obtain the presence of the parents, 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 three (3) days and direct the Presenting Officer to continue efforts to obtain the presence of the child's parent, guardian, or custodian. Upon a showing to the satisfaction of the Court that every reasonable effort was made to obtain service on the parents, guardian, or custodian of the child and an inquiry as to why their attendance at the hearing could not otherwise be obtained, the Preliminary Hearing may be conducted *ex parte* if the Court determines that continued efforts to serve the parents, guardian, or custodian will not likely be successful within the next three (3) days.
- F. Preliminary Hearing Procedure.
1. The Tribal Court shall read the allegations in the Petition in open court, unless the reading of the allegation is waived by the parents, guardian, or custodian.
 2. The Tribal Court shall advise the parents, guardian, or custodian of their respective rights, including the right to a hearing on the allegations in the Petition, the right to remain silent, and the right to admit or deny the allegations in the Petition;
 3. The Tribal Court shall advise the parents, guardian, or custodian of the authority of the Tribal Court pursuant to Section 33 of this Code and the potential consequences thereof.
 4. The Tribal Court may appoint a guardian *ad litem* for the child; and
 5. The Tribal Court may appoint counsel to represent the parents, guardian, or custodian of the child.
- G. Plea of Admission, Plea of Denial, or Remaining Silent. A parent, guardian, custodian, or other respondent may make a plea of admission or a plea of denial, or may remain silent as to the allegations contained in the Petition. The consequence of any plea of

admission shall be to eliminate the need for an Adjudication Hearing. The plea may be accepted at any time after the filing of the Petition, provided that the Band and guardian *ad litem* for the child have notice and opportunity to object before a plea of admission is accepted.

1. Before accepting a plea of admission, the Tribal Court must inform the respondent in open court of the following:
 - a. that if the Tribal Court accepts the plea of admission, the respondent will give up his or her rights to a trial by Judge, to have the Band prove the truth of the allegations by a preponderance of the evidence, to have witnesses appear and testify under oath on his or her behalf and to cross examine the witnesses that may appear against him or her; and
 - b. that the consequences of the plea include the possibility that the plea will be used to support a petition to terminate the respondent's rights concerning the child.
2. The Tribal Court shall not accept a plea of admission until it is satisfied that the allegations contained in the Petition are supported and that the plea is knowingly and voluntarily made. Following acceptance and entry of such a plea of admission, if the Court finds that:
 - a. the allegations that the child is a child-in-need-of-protection are adequately supported by evidence in the record, the Court may dispense with the probable cause determination under subsection G, may proceed under subsections H.1 or H.2, and shall schedule a Disposition Hearing in accordance with Section 22; or
 - b. the allegations that the child is a child-in-need-of-protection are not supported by evidence in the record, the Court may proceed under subsection I or may schedule an Adjudication Hearing in accordance with Section 21.

H. Establishing Probable Cause. The Tribal Court, in determining whether probable cause exists to believe that the child is a child-in-need-of-protection, shall hear testimony concerning the facts upon which the Petition was initiated.

I. Probable Cause Found. If the Tribal Court finds that probable cause exists to believe that the child is a child-in-need-of-protection, and the parent, guardian, or custodian remains silent or denies the allegations in the Petition, the Tribal Court shall order the parent, guardian, or custodian to appear at an Adjudication Hearing and either:

1. Release the child to the custody of the child's parent, guardian, or custodian under such reasonable terms and conditions as are necessary for the protection of the child; or
2. Order removal of the child from the parent, guardian, or custodian or reaffirm a prior removal on an Emergency Petition if the Tribal Court determines that—

- a. it would be contrary to the welfare of the child to remain in the home and custody of the child with a parent, guardian, or custodian presents a substantial risk of harm to the child;
 - b. no provision of services or other arrangement except removal of the child, is reasonably available to adequately safeguard the child from such risk;
 - c. reasonable efforts were made to prevent removal of the child from the home or that the lack of such efforts was reasonable under the circumstances, such as the existence an imminent threat of harm to the child in the home; and
 - d. conditions of custody away from his or her home are adequate to safeguard the child's health and welfare.
- J. Probable Cause Not Found. If probable cause to believe that the child is a child-in-need-of-protection is not found, the Tribal Court shall dismiss the Petition and the child shall be released to the child's parent, guardian, or custodian.
- K. Court Ordered Evaluations and Assessments. The Tribal Court may, at any time after conducting a Preliminary Hearing at which probable cause to proceed upon a Petition is found, order any involved child, parent, guardian, custodian, or any member of the Immediate Family or the Extended Family to undergo a physical, mental, psychological or substance abuse evaluation or assessment by a qualified professional.

Section 21. Adjudication Hearings

- A. Purpose. The Tribal Court shall conduct an Adjudication Hearing for the purpose of determining whether the child is a child-in-need-of-protection and whether reasonable efforts were made to prevent the removal of the child from his or her home.
- B. Commencement. The Adjudication Hearing shall commence as soon as possible but not later than thirty (30) days after the date the child was removed from his or her home or the date the Child Protection Petition is filed with the Tribal Court, whichever occurs first.
- C. Continuances. Continuances of an Adjudication Hearing may be granted by the Tribal Court upon good cause shown and not more than once for a period not exceeding fourteen (14) days upon one of the following occurrences:
- 1. a stipulation of the parties;
 - 2. failure to serve the Notice of Hearing on the parents, guardian, or custodian;
 - 3. the Tribal Court finds that the testimony of a presently unavailable witness is necessary; or

4. a parent, guardian, or custodian requests an opportunity to obtain legal counsel.
- D. Adjudication Order. An adjudication order shall be issued by the Tribal Court not more than ten (10) days from the date of the Adjudication Hearing. Any adjudication order concerning a child removed from his or her home shall conform to the requirements of Section 15 to the extent applicable.

Section 22. Disposition Hearings

- A. Purpose. The purpose of a Disposition Hearing is to determine what measures should be taken with respect to a child found to be a child-in-need-of-protection.
- B. Timing and Notice. A Disposition Hearing may be held immediately after the adjudication if a Case Service Plan has been served on the parties. The interval, if any, between the adjudication and the disposition, is within the discretion of the Tribal Court, provided, however, that when the child is in placement outside the home, the interval may not be more than thirty-five (35) days from the date of the Adjudication Hearing except for good cause. If the Disposition Hearing is not held immediately after the Adjudication Hearing, a Notice of Hearing may be deemed given and received by scheduling the hearing on the record in the presence of the parties or in accordance with Section 12.C.
- C. Proposed Case Service Plan. The Department of Social Services shall prepare or shall cause the responsible state or state-authorized agency to prepare a written report (“Case Service Plan”) describing all reasonable and appropriate alternative dispositions. The Case Service Plan shall contain:
1. a specific plan for the care of, and services to, the child and the child’s parents, guardian, or custodian to resolve the problems presented in the Petition;
 2. a detailed explanation of the necessity for the proposed Case Service Plan and its benefits to the child; and
 3. if the Case Service Plan recommends placement of the child somewhere other than with the child’s parents, guardian, or custodian, it shall state the specific reasons for the placement recommendation and provide an explanation of good cause for any deviation from the placement preferences defined in Section 14, including all efforts undertaken to comply with those requirements.
- D. Service of Case Service Plan. Except as provided otherwise by Tribal Court order, the responsible agency shall file the Case Service Plan with the Court and shall serve copies of the Plan on all parties and other persons entitled to a Notice of Hearing under subsection 12.C and in compliance with the requirements for service stated in subsection 12.C.

E. Disposition Orders.

1. Disposition Order. The Tribal Court shall issue a Disposition Order within ten (10) days of the date of the Disposition Hearing and after considering the proposed Case Service Plan and other evidence, testimony, and arguments offered at the hearing. The Court shall approve a Case Service Plan and may enter such further orders as it considers necessary in the best interests of the child, the best interests of the Extended Family, and the best interests of the Band or other Indian tribe with whom such child is affiliated, including but not limited to an order of reimbursement pursuant to Section 33 of this Code.
2. Placement Preferences. The disposition order shall comply with the placement preferences in Section 14 or shall include findings of fact supported by evidence in the record establishing good cause for any deviation from the placement preferences
3. The Disposition Order shall comply with the requirements of Section 15 to the extent applicable and shall also include a judicial determination with findings of fact supported by evidence in the record that placement of the child outside his or her home continues to be necessary and appropriate, including the likely harm to the child if the child is returned to his or her parent, guardian, or custodian.

- F. Child Support. Parents, custodians or guardians may be ordered by the Tribal Court to make child support payments for children placed with persons who are not eligible for foster care payments or where the foster care payments will not cover the reasonable cost of caring for the children.

Section 23. Disposition Review Hearings

- A. Review. The Disposition Order shall be reviewed by the Tribal Court once every ninety (90) days from the date of the last disposition order, or sooner if the Court finds that the ability and commitment of the parents, guardian, or custodian to fully resolve the problems that required removal of the child from the home presents a reasonable likelihood that the child can be returned to his or her home in less than ninety (90) days.
- B. Scope of Review. At a Disposition Review Hearing, the Tribal Court shall determine the continuing necessity and appropriateness of the child's placement outside his or her home. The Court shall review, on the record, the compliance with the most current Case Service Plan adopted by the Court and all Court orders in the proceeding. The Court shall, in evaluating the success of the plan, consider the following:
1. Services. Compliance by agencies required to provide services to the child and his or her parents, guardian, or custodian and whether the parents, guardian, or custodian complied with the requirements and benefited from the services;
 2. Active Efforts Inquiry. If the parents, guardian, or custodian did not comply with the requirement for services or do not appear to have gained the desired benefit from

services, the Court shall make an inquiry into the active efforts to obtain the compliance of the parent, guardian, or custodian or improve the benefit from the services.

3. Visitation. If visitation did not occur or was infrequent, the Court shall determine why visitation did not occur or was infrequent;
 4. Other Provisions. The extent to which the parent, guardian, or custodian complied with all other provisions of the Case Service Plan and Court orders;
 5. Continued Placement. Likely harm to the child if the child continues to be placed outside the home of his or her parents, guardian, or custodian; and
 6. Reunification. Likely harm to the child if the child is returned to his or her parents, guardian, or custodian.
- C. Extent of Progress. After review of the Case Service Plan, the Tribal Court shall determine the progress made toward alleviating or mitigating the conditions that caused the child to become and to remain a child-in-need-of-protection. The Court may modify any part of the Case Service Plan including, but not limited to, the following:
1. Additional Services. Prescribing additional services that are necessary to rectify the conditions that caused the child to become and to remain a child-in-need-of-protection.
 2. Additional Actions. Prescribing additional actions to be taken to rectify the conditions that caused the child to become and to remain a child-in-need-of-protection.

Section 24. Termination of Parental Rights

- A. Purpose. The purpose of this Section is to provide for the involuntary termination of the parent-child relationship in child protection cases and for the substitution of parental care and supervision by judicial process. This Section shall be construed in a manner consistent with the philosophy that the family unit has the most value to the community and the individual members of the family when that unit remains united and together. Termination of the parent-child relationship should be used only as a last resort when the record of the proceeding reflects that all efforts to avoid termination have been made and have failed and it is in the best interests of the child concerned to proceed under this Section.
- B. Grounds for Involuntary Termination. The Tribal Court may terminate the parental rights of a parent to a child adjudicated a child-in-need-of-protection if the Court finds, by clear and convincing evidence, one or more of the following:
1. Abandonment.

- a. A parent of the child has abandoned the child without provision for support or without communication with the Court, officers of the Court, or Department of Social Services personnel for a period of at least six (6) months. The failure to provide support or to so communicate for a period of at least six (6) months shall be presumptive evidence of the parent's intent to abandon the child. The intentional placement of the child with a caregiver in the Immediate Family or Extended Family of the child shall not be considered abandonment in the absence of other evidence of abandonment.
2. Abuse. The child or a sibling of the child has suffered abuse under either of the following circumstances:
 - a. A parent's act caused the abuse and the Tribal Court finds that there is a reasonable likelihood that the child will suffer abuse in the foreseeable future if placed in the parent's home; or
 - b. A parent who had the opportunity to prevent the abuse failed to do so and the Tribal Court finds that there is a reasonable likelihood that the child will suffer abuse in the foreseeable future if placed in the parent's home.
3. Unchanged Conditions. The parent was a respondent in a Child Protection Petition brought under this Code, twelve (12) or more months have elapsed since the issuance of an initial Adjudication Order, and the Tribal Court finds that:
 - a. the conditions on which the adjudication was based remain substantially unchanged and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child; or
 - b. other conditions exist that cause the child to be a child-in-need-of-protection, and there is no reasonable likelihood that such other conditions will be rectified within a reasonable time considering the age and circumstances of the child.
4. Child Neglect. The parent has neglected 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 and circumstances of the child.
5. Conviction of a Crime. The parent is convicted of a violent or a criminal sexual crime against any person or is convicted of any other crime that proves the unfitness of the parent.
6. Imprisonment for More Than Two (2) Years. The parent is imprisoned for 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.

7. Parental Rights to Sibling Terminated. The rights of the parent to one (1) or more siblings of the child have been terminated due to neglect or abuse and prior attempts to rehabilitate the parent has been unsuccessful.
- C. Termination at Initial Disposition. The Tribal Court may enter an Order Terminating Parental Rights at the initial Disposition Hearing, provided that the Petition to Terminate Parental Rights has been filed with the Court and service of the Petition on the parent and other parties complies with Section 11.
- D. Termination of Parental Rights Order. An Order Terminating Parental Rights under this Code shall include findings of fact and conclusions of law, including the statutory basis for the order. The Tribal Court may issue a decision on the record immediately following the hearing, however a written decision must be entered within twenty-eight (28) days after the record in the hearing is closed. Every Order Terminating Parental Rights shall include a statement that the respondent parent is entitled to Appellate Review of the order.
- E. Upon the termination of parental rights, all rights, powers, privileges, immunities, duties and obligations, including any rights to custody, control, visitation or support existing between the child and the parent shall be severed and terminated unless otherwise provided in the termination order. The parent shall have no standing to appear at any future legal proceeding concerning the child. Any support obligation existing prior to the effective date of the order terminating parental rights shall not be severed or terminated, and any order of reimbursement shall continue pursuant to subsection 33.H.2 of this Code. The rights of one parent may be terminated without affecting the rights of the other parent. A natural parent may not, however, inherit from a natural child after termination
- F. Child's Continued Rights to Benefits. An Order Terminating the Parent-Child Relationship shall not disqualify a child from any benefit due the child from any third person, agencies, states, or the United States. A termination order shall not prevent a child from inheriting property or interest in the same manner as any other natural child from the natural parent. Nor 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 Indian tribe.
- G. Post-Termination Review Hearings. If a child remains a ward of the Tribal Court following the termination of parental rights to the child, the requirements of Section 27, Permanency Planning, shall apply regarding post-termination review of the child's placement.

Section 25. Full Guardianship or Conservatorship

- A. Grounds. Subject to the requirements of this Section, the Tribal Court may appoint a Guardian or Conservator for any Child over whom the Tribal Court may exercise jurisdiction under Section 4 of this Code, in the following situations:

1. When the parental rights of both Parents, or of the surviving Parent, have been terminated or suspended by court order, including in a divorce or a competency proceeding, or through death, disappearance, or incarceration; or
 2. When the appointment is necessary for the immediate welfare of the Child.
- B. Standing. Any person interested in the welfare of a Child, including without limitation, the proposed Guardian or Conservator or the Department of Social Services, may file a petition to appoint a Guardian or a Conservator for a Child.
- C. Contents of Petition. All petitions for appointment of a Guardian or Conservator shall be dated, signed and verified by the petitioner. Petitions for appointment of a Guardian or Conservator may be combined and, whether combined or not, shall include the following information, to the extent reasonably available:
1. The full name, sex, date and place of birth, residence and tribal affiliation of the proposed Ward;
 2. The petitioner's full name, address, tribal affiliation, relationship, if any, to the proposed Ward and a statement regarding the petitioner's interest in the proceeding;
 3. The names and addresses of the proposed Ward's Parents or, if the Parents or any one of them is deceased, the date and place of death;
 4. The names and addresses of other persons known to have an interest in the petition, including Immediate Family (if known);
 5. The basis for the Tribal Court's jurisdiction;
 6. The name and address of any person or agency having legal or temporary custody of the proposed Ward;
 7. Whether the petitioner seeks appointment of a Guardian or Conservator, or both, for the proposed Ward;
 8. The reasons that the appointment of a Guardian or Conservator is sought, including without limitation, specific facts about the Ward's circumstances;
 9. The full name, address, and any tribal affiliation and the relationship to the proposed Ward of every person whom the petitioner recommends for appointment as Guardian or Conservator; and
 10. A complete description and statement of the estimated value of the proposed Ward's assets and liabilities, including but not limited to, any real and personal property owned, possessed, or in which the proposed Ward has an interest, and any income, compensation, insurance, allowance, payment and accounts receivable to which the

proposed Ward is entitled.

D. Notice. The clerk of the Tribal Court shall cause a notice of hearing, along with the petition, to be served in accordance with subsection 12.C.

E. Investigation and Report.

1. Upon filing of a petition for Guardianship or Conservatorship, the Tribal Court shall order the Department of Social Services to conduct an investigation and file with the Tribal Court a written report of the investigation, which shall:
 - a. Contain all pertinent information which may reasonably assist the Tribal Court in rendering a decision, including but not limited to, whether grounds exist to appoint a Guardian or Conservator and the suitability of any proposed appointment;
 - b. Be signed by the representative of the Department of Social services who conducted the investigation and prepared the report;
 - c. Be submitted to the Tribal Court at least ten (10) days prior to the hearing on the petition;
 - d. Be admissible without testimony, and used without regard to privilege, in any proceeding under this Section 25;
 - e. Be available to the petitioner, the proposed Ward, any Parent whose parental rights have not been terminated, any Guardian, any Custodian, any person or agency caring for the proposed Ward, their respective attorneys, any guardian *ad litem* and any other persons as directed by the Tribal Court; and
 - f. Be maintained as confidential in accordance with Section 34.
2. The clerk of the Tribal Court shall cause any such report to be served in accordance with subsection 12.C.
3. Notwithstanding any other provision of this subsection 25.E, the Tribal Court may limit or condition access to any report submitted to the Tribal Court pursuant to this subsection, as reasonably necessary to protect or maintain the confidentiality of any information contained in any such report.
4. Before appointing a Guardian, the Tribal Court shall order the Department of Social Services to cause to be performed any criminal records check, central registry clearance, studies and investigations which are required under applicable law or by the Tribal Court.

F. Hearing.

1. The Tribal Court shall hold a hearing on the petition to determine whether there are grounds for appointment of a Guardian or Conservator, as applicable, to make any such appointment, and to enter any other appropriate order.
2. The Department of Social Services, the petitioner, the proposed Ward, Immediate Family, any Parent whose parental rights have not been terminated, any Guardian, any Custodian, or any person or agency caring for the proposed Ward, their respective attorneys, any guardian *ad litem* and any other persons as permitted by the Tribal Court shall be afforded an opportunity to call witnesses, to cross-examine witnesses, to examine and challenge the information and conclusions contained in any written reports received by the Tribal Court and to examine or cross-examine the signatories of any such reports.
3. The petitioner shall bear the burden to establish by a preponderance of the evidence that grounds exist for appointment of a Guardian or Conservator.
4. The proponent of the appointment of a proposed Guardian or Conservator shall bear the burden to establish by a preponderance of the evidence that a proposed Guardian or Conservator is most suitable for the appointment.
5. At the conclusion of the hearing, the Tribal Court may appoint a Guardian or Conservator, or both, subject to the requirements of this Code.

G. Powers and Duties of a Guardian.

1. The Tribal Court may impose restrictions and limitations on the duties and powers of a Guardian or Conservator and condition the appointment on the performance of specific duties.
2. Except as otherwise provided in this Code, or modified by Tribal Court order, a Guardian shall be responsible for the care, custody and control of the Ward, and the preservation of the Ward's income, assets, and property and shall have the following powers and duties:
 - a. A Guardian shall have custody of the Ward and shall make provisions for the Ward's care, comfort, and maintenance;
 - b. A Guardian shall, as appropriate to the Ward's needs, arrange for the ward's training, education, employment, and rehabilitation;
 - c. A Guardian shall take reasonable care of the Ward's personal possessions and shall be responsible as fiduciary regarding the Ward's Estate;
 - d. In arranging for a place of abode, a Guardian shall give preference to places within the Service Area if placement within the Service Area or outside the

Service Area would be 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 tribally-based;

- e. A Guardian shall have authority to consent to any medical, legal, psychological, or other professional care, counsel, treatment, or service for the Ward;
- f. A Guardian shall take reasonable care of the Ward's personal property, including but not limited to, clothing, furniture and vehicles, and shall commence protective proceedings if any other Ward's property needs protection;
- g. A Guardian may receive money payable to the Ward or for the Ward's support, which shall be applied to the Ward's current needs for support, care, and education. The Guardian shall exercise due care to conserve any excess for the Ward's future needs unless a Conservator is appointed for the Ward's Estate, in which case the excess shall be paid over at least annually to the Conservator. The Guardian shall account to the Conservator for all amounts expended;
- h. If no Conservator has been appointed, a Guardian may institute a proceeding to compel a person's performance of a duty to support the Ward or to pay money for the Ward's welfare;
- i. A Guardian may give any other consent or approval on the Ward's behalf that may be required or in the Ward's best interest; and
- j. A Guardian may petition the Tribal Court for authority to do any act about which the Guardian is uncertain, and the Tribal Court may grant such authority if such act appears to be in the best interests of the Ward.

H. Powers and Duties of a Conservator.

1. All title to the Estate shall remain with the Ward, and shall not be vested in the Conservator; subject, however, to possession and control by the Conservator and the exercise of powers and duties conferred under this Code.
2. The Tribal Court may impose restrictions and limitations on the duties and powers of a Conservator and condition the appointment on the performance of specific duties.
3. Except as otherwise provided in this Code, or modified by Tribal Court order, a Conservator has the powers and duties to perform every act that a reasonable and prudent person would perform incident to the collection, care, preservation, administration and protection of the Ward's Estate to accomplish the purpose of the appointment, without further approval of the Tribal Court, including but not limited to, the following:

- a. to collect, hold, and retain the Estate, in the Ward's name, and receive any addition thereto, until proper disposition in accordance with this Code;
- b. to continue or participate in any business or enterprise in which the Ward was engaged;
- c. to prudently invest or reinvest the Estate and deposit Estate money in a federally insured financial institution;
- d. to acquire or dispose of the Estate, including real property, subject however to subsection 25.H.3, as applicable;
- e. to make repairs or alterations to buildings or other structures, and demolish or construct new buildings or structures;
- f. to vote a security in person or by proxy or sell or exercise stock subscription or conversion rights or pay sums chargeable or accruing against or on account of securities owned by the Ward;
- g. to pay a call, assessment or other amount chargeable or accruing against or on account of security;
- h. to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- i. to insure the Estate property against damage or loss or the Conservator against liability with respect to third persons;
- j. to borrow money to be repaid from the Estate property or otherwise for such periods of time and upon such terms and conditions as the Conservator shall deem advisable, for the purpose of paying debts, taxes, and other claims against the Estate or the Ward;
- k. to pay a tax, assessment or other expense incurred in the collection, care, preservation, administration and protection of the Ward's Estate;
- l. to employ persons, such as attorneys, auditors, investment advisors, appraisers and agents to advise and assist the Conservator in the performance of duties under this Code;
- m. to maintain any appropriate action, claim, or proceeding to obtain support to which the Ward is legally entitled, to recover possession of Estate property, to determine the title thereto, or to recover damages for any injury done to the Estate or the Ward;

- n. to compromise, adjust, arbitrate, sue on, defend, abandon, or otherwise deal with and settle any claim in favor of or against the Estate or the Ward; provided that if the Conservator will share in any portion of a settlement, the Conservator shall not enter into the settlement without the prior approval of the Tribal Court;
 - o. to respond to an environmental concern or hazard affecting the Estate property; and
 - p. to expend or distribute the Estate income or principal for the support, education, care, or benefit of the Ward.
4. A Conservator shall not sell, transfer, mortgage, encumber, lease, or otherwise dispose of the Ward's real property or any interest therein, without the prior approval of the Tribal Court and the Tribal Council to the extent required under Band law.
 5. Whenever meaningful communication is possible, the Conservator shall consult with the Ward before making any major decision affecting the Ward's Estate or affairs.
 6. A Conservator may petition the Tribal Court for authority to do any act about which the Conservator is uncertain, and the Tribal Court may grant such authority if such act appears to be in the best interests of the Ward.
- I. Bond. The Tribal Court may, in its discretion, require a Guardian or Conservator to be bonded in such amount as the Tribal Court may deem necessary to protect the Ward's Estate and affairs.
- J. Acceptance. A Guardian or Conservator appointed by the Tribal Court shall file an acceptance with the Tribal Court on a form approved by the Tribal Court. At a minimum, the acceptance shall state that the Guardian or Conservator accepts the appointment, submits to the jurisdiction of the Tribal Court, will not delegate any authority of the Guardian or Conservator, and will perform all required duties and obligations.
- K. Letters. Upon a Guardian or Conservator filing with the Tribal Court proof of any bond required by the Tribal Court and the required acceptance form, the clerk of the Tribal Court shall issue letters under seal of the Tribal Court granting the Guardian or Conservator the powers authorized by Tribal Court order and this Code, as applicable.
- a. Certification of letters and a statement that on a given date the letters are in full force and effect may appear on the face of copies furnished to the Guardian or Conservator or interested persons.
 - b. Any restriction or limitation of the powers of a Guardian or Conservator must be set forth in the letters.
- L. Reimbursement.

1. A Guardian or Conservator shall be entitled to be reimbursed out of the Ward's Estate for necessary, reasonable, and proper expenditures incurred in the performance of the Guardian's or Conservator's duties, subject to such limitations and requirements of subsection 25.K.2 and as the Tribal Court may establish.
2. The Tribal Court may order reimbursement payments to be made on a regular schedule or on the request of the Guardian or Conservator; subject, however, to the submission of adequate proof of the expenditure, the necessity of the expenditure, and the availability of funds.

M. Reports and Review Hearings.

1. All Guardians and Conservators shall file reports with the Tribal Court annually within fifty-six (56) days after the anniversary of the appointment and at such other times as ordered by the Tribal Court. If the report is not filed, the Tribal Court shall take appropriate action.
2. All reports filed by a Guardian shall provide complete and accurate information regarding the condition of the Ward and the Ward's Estate that is subject to the Guardian's possession or control. If required by the Tribal Court, reports shall be filed on a form approved by the Tribal Court.
3. All reports filed by a Conservator shall provide a full accounting of the Ward's estate that is subject to the Conservator's possession or control. If required by the Tribal Court, reports shall be filed on a form approved by the Tribal Court.
4. The Tribal Court shall conduct the annual review within sixty-three (63) days after the anniversary date of the appointment of the Guardian or Conservator and may conduct a review hearing as it deems necessary.
5. In connection with any review hearing, the Tribal Court may order the Department of Social Services to conduct an investigation and file a written report of the investigation, which shall include a recommendation regarding whether the guardianship should continue or be modified and, if modified, the nature of the modification.
6. The clerk of the Tribal Court shall cause a notice of hearing along with the report to be served in accordance with subsection 12.C.
7. A Guardian shall notify the Tribal Court in writing within seven (7) days of any change in the Guardian's address.
8. Without limiting any obligation imposed under applicable law, a Guardian shall provide written notice to the Tribal Court, the Department of Social Services, any Parent whose parental rights have not been terminated, within fourteen (14) days of the Ward's death.

N. Termination, Revocation, Successor and Modification.

1. A Guardian or Conservator, who wishes to terminate the guardianship or conservatorship, shall file a petition with the Tribal Court setting forth the reasons for the request. A petition may include a request to appoint a successor Guardian or Conservator.
2. The Tribal Court on its own motion, or the Department of Social Services, the Ward, any guardian *ad litem*, any Parent whose parental rights have not been terminated, or any person interested in the Ward's welfare, may petition for an order revoking or modifying a guardianship or conservatorship. A petition may include a request to appoint a successor Guardian or Conservator.
3. Upon the Tribal Court's own motion or receipt of any such petition, the Tribal Court shall set a date for a hearing to be held within twenty-eight (28) days.
4. The clerk of the Tribal Court shall cause a notice of the hearing, along with the motion or petition, to be served in accordance with subsection 12.C.
5. A guardianship or conservatorship shall be terminated, revoked, modified, or a successor Guardian or Conservator appointed, if the Tribal Court finds by a preponderance of evidence that such action is in the best interests of the Ward.
6. Before terminating, revoking or modifying a guardianship or conservatorship or appointing a successor Guardian or Conservator, the Tribal Court may direct the Department of Social Services to prepare and file a report with the Tribal Court, which shall include recommendations regarding whether the guardianship or conservatorship should continue or be modified and temporary placement, if necessary.
 - a. Any such report shall be filed with the Tribal Court at least seven (7) days before the hearing.
 - b. The clerk of the Tribal Court shall cause any such report to be served in accordance with subsection 12.C.
7. Upon termination or revocation of a guardianship or conservatorship under this subsection, or the death of a Guardian or Conservator, the Tribal Court, if necessary, may appoint a successor and, prior to any such appointment, may enter emergency or interim orders in the best interests of the Ward.
8. Upon receipt of a petition or notice of a motion under this subsection 25.N, the Tribal Court may order that a Ward be temporarily removed from a Guardian to protect the health, safety, or welfare of the Ward, pending hearing on the matter, and may enter emergency or interim orders in the best interests of the Ward.

O. Term. A Guardian or Conservator shall serve until the Ward's death, adoption, marriage, attainment of the age of 18, or the Guardian or Conservator is discharged from such duties by order of the Tribal Court.

P. Fiduciary Duty.

1. Any person acting as a Guardian or Conservator acts in the capacity of a fiduciary and shall observe the standard of care applicable to a trustee, including but not limited to, the duties of loyalty, care and prudence.
2. Notwithstanding any other provision of this Code, any person who breaches the fiduciary duty will be liable for all damages resulting from such breach.

Q. Consent

1. Any person who accepts appointment as a Guardian or Conservator submits to the jurisdiction of the Tribal Court, and shall be deemed to agree as follows:
 - a. any portion of the Ward's Estate which is under the control or possession of the Guardian or Conservator in connection with the guardianship or conservatorship shall be subject to the jurisdiction of the Tribal Court; and
 - b. the Guardian or Conservator shall be subject to the jurisdiction of, and all orders entered by, the Tribal Court in connection with all actions or proceedings related in any way to service in such capacity, and notices served upon the Guardian or Conservator shall have the same force and effect as if such service had been personally made upon such person or entity within the Band's trust land.
2. Any surety of any bond provided in connection with this Section shall be deemed to have consented to the jurisdiction of the Tribal Court for purposes of any action against such surety in connection with any such bond.

R. Transactions.

1. Any person who, in good faith, either assists or deals with a Guardian in the conduct of a transaction may assume the existence and proper exercise of trust powers by the Guardian. A third person is not bound to inquire whether a Guardian may act or is properly exercising power. Unless the third person has actual knowledge that the Guardian is exceeding or improperly exercising the Guardian's powers, a third person shall be fully protected in dealing with the Guardian as if the Guardian properly exercised the power.
2. Any person who in good faith either assists or deals with a Conservator for value in a transaction, excluding any transaction requiring a Tribal Court order, shall be protected as if the Conservator properly exercised the power. The fact that a person

knowingly deals with a Conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise.

S. Liability.

1. The fact that a person is a Guardian or Conservator shall not, in itself, make such person liable to third persons for the Ward's acts.
2. Unless otherwise provided in a contract, a Conservator shall not be personally liable to a third person on a contract properly entered into in a fiduciary capacity in the course of exercising any power or performing any duty unless the Conservator failed to reveal the representative capacity and identify the Estate in connection with the contract.
3. A Conservator shall not be personally liable to a third person for an obligation arising from ownership or control of the Estate or a tort committed in the course of exercising any power or performing any duty unless the Conservator was personally at fault.
4. A claim based on a contract entered into by a Conservator in a fiduciary capacity, an obligation arising from ownership or control of the Estate, or a tort committed in the course of Estate administration may be asserted against the Estate by proceeding against the Conservator in the Conservator's fiduciary capacity, whether or not the Conservator is personally liable for the claim.
5. Any question of liability between the Estate and a Guardian or Conservator may be determined in a Tribal Court proceeding for accounting, surcharge, indemnification, or other appropriate proceeding or action.

Section 26. Juvenile Guardianship

A. Purpose.

1. The purpose of this Section 26 is to enact Band law which reflects MCL §712A.19.a and §712A.19.c, by authorizing the Tribal Court to appoint a Juvenile Guardian in accordance with this Section.
2. A Juvenile guardianship under this Section 26 is distinct from a guardianship authorized under Section 25 and is intended to provide a Child who is a Child-In-Need-Of-Protection and a temporary or permanent Ward of the Tribal Court, with permanency and stability when the Tribal Court determines that reunification and termination are not appropriate permanency goals or where adoption is not an appropriate permanency goal for the permanent Ward after termination of parental rights.
3. A Juvenile guardianship under this Section 26 is intended to provide the Juvenile

Guardian with the ability to apply for guardianship assistance funds which are available through the United States and the State of Michigan and are administered by the Michigan Department of Human Services.

B. Grounds.

1. Subject to the requirements of this Section, the Tribal Court may appoint a Juvenile Guardian for any Child-In-Need-Of-Protection over whom the Tribal Court has exercised jurisdiction under Section 4 of this Code, in the following situations:
 - a. The Tribal Court determines, at a permanency planning hearing prior to termination of parental rights that reunification and termination are not viable permanency options and it is in the best interests of the Child to appoint a Juvenile Guardian; or
 - b. The Tribal Court determines, after termination of parental rights to a Child, at a post-termination review hearing that it is in the best interests of the Child to appoint a Juvenile Guardian, subject however, to the consent of the Michigan Children's Institute for a Child committed to Michigan Children's Institute after termination of parental rights.
2. If a Juvenile Guardianship is proposed for a Child-In-Need-Of-Protection, who is in foster care, the Tribal Court shall continue the Child's placement, subject to the provisions of this Code, pending receipt of information required in Section 26.C.

C. Investigation and Report.

1. After making findings under Section 26.B.1.a or 26.B.1.b, the Tribal Court shall order the Department of Social Services to:
 - a. Conduct a criminal records check and central registry clearance of each proposed Juvenile Guardian and all adult residents of the home and provide the results of both checks to the Tribal Court within seven (7) days of the Order;
 - b. Conduct a home study of each proposed Juvenile Guardian's home, which shall be filed with the Tribal Court within 28 days, unless a home study has been performed within the immediately preceding 365 days, in which case a copy of that home study shall be submitted to the Tribal Court.
2. The Tribal Court shall also order the Department of Social Services to conduct an investigation of each proposed Juvenile Guardian and residents of every proposed Guardian's home and file a written investigative report with the Tribal Court within twenty-eight (28) days of the order. The investigative report shall include the following (and shall be updated in writing as appropriate):

- a. The recommendation of the Department of Social Services regarding the permanency plan and the reasons why reunification, termination and adoption have been ruled out as appropriate permanency options;
 - b. The recommendation of the Department of Social Services as to why the permanency plan of a Juvenile guardianship is in each Child's best interests.
 - c. Information about whether the proposed Juvenile Guardian has a strong attachment and commitment to caring permanently for each Child.
 - d. Whether each Child is fourteen (14) years of age or older and whether that Child has been consulted about the Juvenile guardianship permanency plan.
 - e. Whether the proposed Juvenile Guardian will request financial guardianship assistance from the Michigan Department of Human Services; and in those instances where guardianship assistance has been requested prior to submission of the investigative report, then:
 - i. Whether guardianship assistance has been granted and the agreement has been signed;
 - ii. Whether guardianship assistance has been denied; and
 - iii. Any other information regarding the status of the guardianship assistance request;
 - f. Whether the Child has lived in the proposed Juvenile Guardian's home for at least six (6) consecutive months prior to applying for guardianship assistance or, in those instances where no guardianship assistance is sought, then the length of time the child has been in the home of the proposed Juvenile Guardian;
 - g. Whether the Child is and has been determined to be Title IV-E eligible; and
 - h. Whether the proposed Juvenile Guardian is a relative of the Child and whether the proposed Guardian is a licensed foster parent.
3. The investigation report shall:
- a. Be signed by the representative of the Department of Social services who conducted the investigation and prepared the report;
 - b. Be available to the proposed Ward, any Parent whose parental rights have not been terminated, any Guardian, any Custodian, any person or agency caring for the proposed Ward, their respective attorneys, any guardian *ad litem* and any other persons as directed by the Tribal Court; and

- c. Be maintained as confidential in accordance with Section 34.
- 4. The clerk of the Tribal Court shall cause the investigative report to be served in accordance with subsection 12.C
- 5. Notwithstanding any other provision of this subsection 26.C, the Tribal Court may limit or condition access to any investigative report submitted to the Tribal Court pursuant to this subsection 26.C as reasonably necessary to protect or maintain the confidentiality of any information contained in any such report.

D. Order and Acceptance

- 1. Within seven (7) days of receiving the investigative report required under subsection 26.C.2, the Tribal Court shall either enter an order appointing the Juvenile Guardian or schedule the matter for hearing.
- 2. Notwithstanding any other provision of this Section 26, if the investigate report states that guardianship assistance will be requested, then the Tribal Court shall not enter an order appointing a Juvenile Guardian until it either:
 - a. Receives written notice from the Department of Social Services stating that a guardianship assistance agreement has been signed; or
 - b. Receives written notice from the Department of Social Services stating that guardianship assistance has been denied.
- 3. At the time of appointing a Juvenile Guardian, or any time during the period of appointment, the Tribal Court may determine whether the Ward's Estate is sufficient to require appointment of a Conservator and, in such event, shall order the Juvenile Guardian to petition the Tribal Court for appointment of a Conservator pursuant to Section 25.
- 4. An order appointing a Juvenile Guardian shall be substantially similar to the corresponding SCAO Form JC91 (as may be amended). A separate order shall be entered for each Child.
- 5. Upon entry of an order appointing the Juvenile Guardian, the Court shall schedule a hearing within ninety (90) days of the last hearing conducted by the Tribal Court. Notice of the hearing shall be provided in accordance with Section 12 of this Code.
- 6. Upon entry of an order appointing the Juvenile Guardian, the Juvenile Guardian shall file an Acceptance of Appointment form with the Tribal Court, which shall be on a form provided by the Tribal Court. The Acceptance of Appointment form shall state that the Juvenile Guardian accepts the appointment, submits to the jurisdiction of the Tribal Court, will not delegate the Juvenile Guardian's authority and will perform all required duties as determined by the Tribal Court.

7. Upon receipt of the Acceptance of Appointment form, the Tribal Court shall issue letters of authority setting forth the terms of the Juvenile guardianship.

E. Review Hearing

1. At the first review hearing after appointing a Juvenile Guardian, the Court shall terminate the appointment of a Guardian *ad litem*, and any court-appointed counsel for the parents when no termination of parental rights has occurred.
2. The Court may reappoint a Guardian *ad litem*, or appoint a Guardian *ad litem* to represent the Child in any proceeding brought within the Juvenile guardianship.
3. Notwithstanding subsection 4.C, the jurisdiction of the Tribal Court over a Child in regard to any Child protection proceeding under this Code shall automatically terminate after the Tribal Court appoints a Juvenile Guardian under this Section and conducts a review hearing under Section 23 (when parental rights to the Child have not been terminated), or a review hearing under subsection 24.G (when parental rights to the Child have been terminated), unless the Tribal Court enters an earlier order terminating its jurisdiction.
4. The jurisdiction of the Tribal Court over a Juvenile guardianship created under Section shall continue until released by Tribal Court order.

F. Authority and Letters.

1. Upon entry of the order appointing a Juvenile Guardian, and execution of the Acceptance of Appointment form, the Guardian shall have all of the duties and authority of a Guardian found in Section 25 of this Code.
2. The Juvenile Guardian must abide by all restrictions included in the letters of authority granted by the Court.
 - a. Certification of letters of authority, and a statement that on a given date the letters or authority are in full force and effect, may appear on the face of copies furnished to the Juvenile Guardian or interested persons.
 - b. Any restriction or limitation of the powers of a Juvenile Guardian must be set forth in the letters of authority, including without limitation, restrictions on moving the domicile of the Ward without Tribal Court approval.

- #### G. Bond.
- The Tribal Court may, in its discretion, require a Juvenile Guardian to be bonded in such amount as the Tribal Court may deem necessary to protect the Ward's Estate and affairs.

H. Reports and Review Hearings.

1. A Juvenile Guardian shall file written reports with the Tribal Court annually within fifty-six (56) days after the anniversary of the appointment and at such other times as ordered by the Tribal Court. If the report is not filed, the Tribal Court shall schedule a hearing to determine the continuation of the Juvenile guardianship.
2. All reports filed by a Juvenile Guardian shall provide complete and accurate information regarding the condition of the Ward and the Ward's Estate that is subject to the Juvenile Guardian's possession or control. If required by the Tribal Court, reports shall be filed on a form approved by the Tribal Court.
3. The Tribal Court shall conduct an annual review within sixty-three (63) days after the anniversary date of the appointment of the Juvenile Guardian and annually thereafter. The Tribal Court may also conduct a review hearing as it deems necessary.
4. In connection with any review hearing, the Tribal Court may order the Department of Social Services to conduct an investigation and file a written report of the investigation, which shall include a recommendation regarding whether the Juvenile guardianship should continue or be modified and, if modified, the nature of the modification.
5. The clerk of the Tribal Court shall cause a notice of hearing along with the report to be served in accordance with subsection 12.C.
6. A Juvenile Guardian shall notify the Tribal Court in writing within seven (7) days of any change in the Juvenile Guardian's address.
7. Without limiting any obligation imposed under applicable law, a Juvenile Guardian shall provide written notice to the Tribal Court, the Department of Social Services and any Parent whose parental rights have not been terminated, within fourteen (14) days of the Ward's death.

I. Resignation, Removal, Successor, Modification and Termination.

1. A Juvenile Guardian or other interested person may file a petition to terminate the Juvenile guardianship with the Tribal Court setting forth the reasons for the request. A petition may include a request to appoint a successor Juvenile Guardian.
2. The Tribal Court on its own motion, or upon petition from the Department of Social Services, or the guardian *ad litem*, may petition for an order revoking modifying a guardianship. A petition may include a request to appoint a successor Juvenile Guardian.
3. Upon the Tribal Court's own motion or receipt of a petition, the Tribal Court shall set a date for a hearing to be held within twenty-eight (28) days.

4. The clerk of the Tribal Court shall cause a notice of the hearing, along with the motion or petition, to be served in accordance with subsection 12.C.
5. The appointment of a Juvenile Guardian shall be terminated and a guardianship shall be revoked or modified, or a successor Juvenile Guardian appointed, if the Tribal Court finds by a preponderance of evidence that such action is in the best interests of the Ward, provided that in regard to revocation, the Tribal Court also must find that it is contrary to the welfare of the Ward be placed in or remain in the Juvenile Guardian's home and that reasonable efforts were made to prevent removal.
6. Before terminating the appointment of a Juvenile Guardian or revoking or modifying the terms of a Juvenile guardianship or appointing a successor Juvenile Guardian, the Tribal Court may direct the Department of Social Services to prepare and file a report with the Tribal Court, which shall include recommendations regarding whether the appointment of Juvenile guardianship should continue or be modified and temporary placement, if necessary.
 - a. Any such report shall be filed with the Tribal Court at least seven (7) days before the hearing.
 - b. The clerk of the Tribal Court shall cause any such report to be served in accordance with subsection 12.C.
7. If the Tribal Court revokes a Juvenile guardianship, the Tribal Court shall enter an order placing the Child under the care and supervision of the Department of Social Services, and jurisdiction over the Child under the previous child protection proceeding shall be reinstated upon issuance of such order. The Tribal Court shall hold a dispositional review hearing under Section 23 within forty-two (42) days of the revocation.
8. If the Tribal Court terminates the appointment of a Juvenile Guardian or the Juvenile Guardian dies, the following shall apply:
 - a. If there is no successor, the Tribal Court shall proceed according to subsection 26.I.7; and
 - b. If there is a successor, the Tribal Court shall proceed with an investigation and appointment of a successor in accordance with the requirements of this Section, and the Tribal Court's jurisdiction over the Juvenile guardianship shall continue.
9. Upon receipt of a petition or notice of a motion under this subsection 26.I, the Tribal Court may order that a Ward be temporarily removed from a Juvenile Guardian to protect the health, safety, or welfare of the Ward, pending hearing on the matter, and may enter emergency or interim orders in the best interests of the Ward.

J. Term. A Juvenile Guardian shall serve until the Ward's death, attainment of the age of

18, or the Juvenile Guardian is discharged from such duties by order of the Tribal Court.

K. Fiduciary Duty.

1. Any person acting as a Juvenile Guardian acts in the capacity of a fiduciary and shall observe the standard of care applicable to a trustee, including but not limited to, the duties of loyalty, care and prudence.
2. Notwithstanding any other provision of this Code, any person who breaches the fiduciary duty will be liable for all damages resulting from such breach.

L. Transactions. Any person who, in good faith, either assists or deals with a Juvenile Guardian in the conduct of a transaction may assume the existence and proper exercise of trust powers by the Juvenile Guardian. A third person is not bound to inquire whether a Juvenile Guardian may act or is properly exercising power. Unless the third person has actual knowledge that the Juvenile Guardian is exceeding or improperly exercising the Juvenile Guardian's powers, a third person shall be fully protected in dealing with the Juvenile Guardian as if the Juvenile Guardian properly exercised the power.

M. Liability. The fact that a person is a Juvenile Guardian shall not, in itself, make such person liable to third persons for the Ward's acts. Any question of liability between the Estate and a Juvenile Guardian may be determined in a Tribal Court proceeding for accounting, surcharge, indemnification, or other appropriate proceeding or action.

Section 27. Permanency Planning

- A. Permanency Petition. For every child adjudicated to be a child-in-need-of-care who has been removed from his or her parents, guardian, or custodian, the Department of Social Services shall prepare a Permanency Plan that complies with Section 14, Placement of Children, and shall file the Plan with the Tribal Court not later than eleven (11) months from the date of the removal. A Permanency Plan shall be filed every twelve (12) months thereafter as long as the child remains a child-in-need-of-protection and in a placement away from the parents, guardian, or custodian from whom the child was removed. Service of the Permanency Plan shall be in accordance with Section 12.
- B. Permanency Hearing. The Tribal Court shall hold a Permanency Planning Hearing not later than twelve (12) months from the date of removal of the child and shall hold subsequent Permanency Planning Hearings not later than every twelve (12) months thereafter as long as the child remains a child-in-need-of-protection and in a placement away from his or her parents, guardian, or custodian. A Permanency Planning Hearing may be combined with a Disposition Review Hearing under Section 23.
- C. Scope of Review. A Permanency Planning Hearing shall be conducted to review the status of the child and the progress made toward the child's return to his or her parents, guardian, or custodian or the feasibility of placement in some other permanent home.

- D. **Parental Rights Not Terminated.** The Tribal Court shall give full consideration to returning the child to his or her parents, guardian, or custodian if such person's rights to the child have not been terminated and the Court determines that the return of the child would not pose a substantial risk of harm to the child. The failure of the parents, guardian, or custodian to substantially comply with the terms and conditions of the case service plan and Disposition Orders of the Tribal Court creates a rebuttable presumption that return of the child to the parents, guardian, or custodian will pose a substantial risk of harm to the child.
- E. **Alternative Permanent Placement Plans.** If the Tribal Court determines at a Permanency Planning Hearing that the child should not be returned to his or her parents, guardian, or custodian, the Department of Social Services shall propose an alternative permanent placement plan which shall comply with Section 14, Placement of Children, or shall provide good cause for any deviation from such requirements.
- F. **Tribal Court Orders Regarding Permanency Plans.** Every Tribal Court order regarding a Permanency Plan shall include a determination, including findings of fact supporting such determination, as to whether or not reasonable efforts have been made to finalize a permanency plan or that not making such efforts is reasonable.

Section 28. Voluntary Relinquishment of Parental Rights

Parental rights may be voluntarily relinquished by a parent in writing, if signed by the parent in the presence, and with the approval, of the Tribal Court. A relinquishment of parental rights shall not be approved by the Court prior to thirty (30) days after the date the relinquishment is first made, provided that no relinquishment shall be valid if made prior to the birth of the child. The Tribal Court may deny a request for relinquishment of parental rights if the Court finds that the request may involve improper reasons or motivations, such as fraud, duress, or a desire to avoid financial obligations to the child. The Court shall not approve the request without first ensuring that the parent understands the consequences of the voluntary relinquishment. The parent may withdraw the relinquishment of parental rights at any time before the Court enters a final order approving the relinquishment and terminating the parent's rights to the child. Subsections 24.E and 24.F shall apply to any order terminating parental rights under this Section.

Section 29. Authorization for Medical Care

Court Authorization. At any time, the Tribal Court may authorize medical care, including examination and treatment, for a child that is not a ward of the Court when:

- A. **Parent Not Available.** No parent, legal guardian or custodian is immediately available and cannot be found after reasonable effort in the circumstances of the case; or
- B. **Physician's Opinion.** A physician testifies under oath in Tribal Court or states in writing, which is dated and signed by the physician, that in the physician's professional opinion, the life of the child would be greatly endangered without certain treatment or there is probable cause to believe that the child faces an imminent risk of substantial harm if

medical care is not immediately provided to the child.

- C. Except as otherwise provided by Tribal Court order, the procedural requirements for a proceeding initiated under this Section 29 shall, to the greatest possible extent, conform to the relevant procedural requirements set forth in subsection 18.G.1.

Section 30. Delegations of Parental Authority

- A. **Power of Attorney.** A parent, guardian, or custodian, including the Department of Social Services may, by a properly executed power of attorney, delegate to another person powers of a parent regarding the care, custody and property of a child, provided that child is not a presently a ward of any court or the subject of a child protection proceeding or investigation. Said powers may include, without limitation: consent to admission to a hospital or school; consent to secure routine dental care, non-surgical medical care, and emergency dental, medical or surgical treatment. The delegation does not include power to consent to marriage, non-emergency elective surgery, or adoption. The delegation shall be valid for no more than 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. A person acting under a power of attorney may be referred to as an “attorney in fact”, “agent” or “power of attorney.” The delegation is renewable upon execution of a new power of attorney.
- B. **Limited Guardianship.**
 - 1. **Establishment.** The Tribal Court may, for good cause shown upon a petition of the custodial parent(s) of a child, establish a limited guardianship over a child, provided that the child is neither a ward of any court or the subject of any child protection investigation or proceeding. The Tribal Court may establish the limited guardianship under such terms and conditions as the Court sets forth in a written order.
 - 2. **Visitation.** Members of the child’s Immediate Family and Extended Family shall be granted liberal visitation rights subject to the determination of the Tribal Court that such visitation would be in the best interest of the child.
 - 3. **Termination.** A limited guardianship may be terminated upon request of the petitioning parent(s) or the guardian if the Tribal Court determines that there is no longer a need for the guardianship and that it is in the child’s best interests to return custody of the child to the parent(s) or custodian.
 - 4. Except as may be provided otherwise by Tribal Court order, the applicable provisions of subsections 25.I and 25.K – P of this Code shall apply to a limited guardianship.

Section 31. Adoption

- A. **Purpose.** The purpose of this Section is to create new substitute relationships in a manner which protect the rights and the welfare of Indian children, natural parents, and adoptive

parents. It is the policy of the Pokagon Band to promote the adoption of Pokagon Children by members of the Band.

B. Jurisdiction. The Tribal Court shall have jurisdiction over all adoptions where:

1. the person to be adopted (“adoptee”) is a Pokagon Child; or
2. the adoptee is of Indian descent and the petitioner(s) is or are members of the Pokagon Band.

C. Who May File a Petition. Any adult may file an Petition for Adoption.

D. Parental Consent to Adoption. Adoption may only be ordered by the Tribal Court when:

1. parental rights have been terminated pursuant to Section 24 of this Code;
2. parental rights have been voluntarily relinquished in accordance with Section 28 of this Code; or
3. the parents consent to the adoption by signing a written consent to adoption in the presence of the Tribal Court after the Court establishes that the consenting parent(s) have been informed and fully understand the nature and consequences of their consent. Parental consent to adoption shall not be valid prior to thirty (30) days after the date such consent is first given, provided that no consent shall be valid if given prior to the birth of the child. The minority-age status of parent(s) shall not be a bar to the right of consent nor shall it invalidate such consent. Consent to adoption may be withdrawn, with or without a reason or hearing, at any time prior to the entry of a final order of adoption by the Tribal Court or within one (1) year after a final order of adoption is entered upon a showing that such consent was given through fraud or duress.

E. Petition for Adoption. The Petition for Adoption shall be filed with the Tribal Court. It shall be signed by the adopting parent(s) and shall contain the following information:

1. The full name, residence, documentary proof of the date and place of birth, and evidence that the child is a Pokagon Child;
2. The full name(s), residence(s), date(s) and places(s) of birth, and occupation(s) of the adopting parent(s); evidence of membership in the Band, or eligibility for membership in the Band, of the child; and if appropriate evidence of membership in the Band, or eligibility for membership in the Band, of the adopting parent(s); and any adult members of the household of the adopting parent(s);
3. Proof of the voluntary relinquishment of parental rights or the termination of parental rights, if applicable, and notice to surviving grandparents;

4. A statement by the adopting parent(s) that it is the desire of the adopting parent(s) that the legal relationship of a parent and child be established between them and the adoptee; and
 5. A full description and statement of value of all of the adoptee's present and assets and property and any assets or property to which the adoptee will be entitled by devise or otherwise, to the best of the petitioner's knowledge.
- F. Investigative Report. Upon the filing of a Petition for Adoption, the Tribal Court shall request that the Department of Social Services investigate and prepare a report regarding the stability of the adoptee for adoption and the financial ability, moral character, physical fitness, and general background of the adopting parent(s). The Tribal Court may also request any local, state or federal agency to provide assistance in obtaining information as to the suitability of the adopting parent(s) for the adoption.
- G. Recommendation to the Tribal Court. Upon completion of the investigative report, the Department of Social Services shall submit the report to the Family Welfare Commission and shall meet with the Commission to formulate a recommendation for the Tribal Court.
- H. Time for Filing Report and Recommendation. The Department of Social Services shall, within thirty (30) days of the date of the request to investigate from the Tribal Court, file the investigative report and the joint recommendation of the Department of Social Services and the Family Welfare Commission with the Court. The Tribal Court may extend the time for filing the report and recommendations upon request for good cause shown. The Department of Social Services may be assisted in the proceeding by the Presenting Officer.
- I. Initial Hearing. Within fourteen (14) days of the receipt of the investigative report and recommendation from the Department of Social Services and the Family Welfare Commission, the Tribal Court shall schedule an Initial Hearing on the Petition for Adoption.
- J. Notice. The adoptee, adopting parent(s), and all other interested parties shall be served with a Notice of Hearing along with copies of the investigative report and the recommendations in accordance with the requirements of Section 12.C of this Code. In addition, summonses shall be served on the adopting parent(s) and on the person(s) with custody of the adoptee, including the parents if parental rights have not been relinquished or terminated. The Summons on the person(s) with custody of the adoptee shall compel the custodian to cause the attendance of the adoptee at the Initial Hearing.
- K. Waiver of Trial Custody Period. If the adoptee has been in the custody of the adoptive parent(s) for more than six (6) months and the Department of Social Services and the Family Welfare Commission recommend the adoption at the Initial Hearing, the Tribal Court, upon a motion made by the Department of Social Services, may waive the trial custody period and the final adoption decree may be entered at the Initial Hearing

- L. Final Hearing if Trial Custody Period Not Waived. Not less than ninety (90) days or more than one hundred twenty (120) days after the adoptee has been in the custody of the adoptive parent(s), the adoptee and adopting parent(s) shall appear before the Tribal Court. The adopting parent(s) and the Department of Social Services shall report to the Tribal Court about the welfare of the adoptee, the current status of the adopting parent(s) home, and the desire of the adoptive parent(s) to finalize the adoption.
- M. Adoption Decree; Extension of Trial Custody Period. If the Tribal Court is satisfied that the interests of the adoptee are best served by the proposed adoption, the final decree of adoption may be entered. The Tribal Court may, on its own or upon a request by the adopting parent(s), a six (6) months extension of the trial custody period, after which a final adoption decree must be entered or the adoptee returned to the custody of the Court.
- N. Effect of the Final Decree of Adoption.
1. Parent and Child Relationship. After the final decree of adoption is entered, the relationship between parent(s) and the child and the rights, duties and other legal consequences of a natural relationship between a child and parent(s) shall thereafter exist between the adoptee and the adopting parent(s) provided, however, that the adoptee shall not acquire any right to membership in the Pokagon Band or be entitled to any benefits of Pokagon Band membership except as expressly provided by Pokagon Band law.
 2. Tribal Status Not Affected. The status of an adoptee as a member of the Band shall not be affected by adoption.
 3. Natural Parents Relieved of Parental Responsibilities. After the final decree of adoption is entered, the natural parents, except a natural parent who is the spouse of an adopting parent, shall be relieved of all parental responsibilities for such adoptee and shall have no right regarding the adoptee, including the right to inherit the adoptee's property by descent or distribution provided, however, that child support obligations incurred by such parent(s) prior to the date of the adoption decree shall remain enforceable and any order of reimbursement shall continue pursuant to subsection 33.H.2 of this Code.
 4. Assumption of Surname. Children adopted by order of the Tribal Court shall assume the surname of the person(s) by whom they are adopted, unless the Court orders otherwise.
 5. Rights of Adoptees. Adoptees shall be entitled to the same rights of person and property as the natural children of the adopting parents.
- O. Confidentiality of Proceedings. Unless the Tribal Court orders otherwise, hearings held in proceedings under this Section shall be confidential and shall be held in closed session, without the admission of any persons other than the parties to the proceeding, witnesses, the Department of Social Services personnel involved in the proceeding, and the

Presenting Officer.

Section 32. Emancipation of a Minor

A. Emancipation by Operation of Law. Emancipation by operation of law of a minor who is an enrolled member of the Pokagon Band may occur under any of the following circumstances:

1. When a minor is validly married;
2. When a minor reaches the age of 18 years;
3. During the period when the minor is on active duty with the armed forces of the United States; or
4. 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. The minor or the minor's parent shall remain responsible for the cost of any medical care or treatment rendered pursuant to this subdivision. An emancipation pursuant to this subdivision shall end upon the termination of medical care or treatment or upon the minor's release from custody, whichever occurs first.

Notwithstanding any such emancipation by operation of law, a minor who is a Child at least eighteen (18) years of age, but less than twenty-one (21) years of age, and over whom the Tribal Court is exercising continuing jurisdiction pursuant to Section 4 of this Code, shall still be considered a Child under this Code, unless ordered otherwise by the Tribal Court.

B. Emancipation by Petition.

1. A minor seeking emancipation who is an enrolled member of the Pokagon Band and has reached seventeen (17) years of age shall file a Petition for Emancipation with the Tribal Court. The Petition shall be signed and verified by the minor, and shall include all of the following information:
 - a. The minor's full name and birth date, and the county and state where the minor was born;
 - b. A certified copy of the minor's birth certificate;
 - c. The name and last known address of the minor's parents, guardian, or custodian;
 - d. The minor's present address, and length of residency at that address;
 - e. A declaration by the minor indicating that he or she has demonstrated the ability

to manage his or her financial affairs. The minor may include any information he or she considers necessary to support the declaration; and

- f. A declaration by the minor indicating that he or she has the ability to manage his or her personal and social affairs. The minor may include in this section any information he or she considers necessary to support the declaration.
2. The Petition shall include an affidavit by any adult declaring that the individual has personal knowledge of the minor's circumstances and believes that under those circumstances emancipation is in the best interests of the minor.
 3. A copy of the Petition and a summons to appear at the hearing shall be served on the minor's parents, guardian, or custodian in compliance with the requirements of Section 11 of this Code. A Notice of Hearing shall be served on the individual who provided the affidavit required under subsection 32.B.2.
 4. The Tribal Court shall issue an emancipation order if it determines that emancipation is in the best interest of the minor and the minor establishes all of the following:
 - a. the minor's parents, guardian, or custodian do(es) not object to the Petition or that the objecting parents, guardian, or custodian will not be providing the minor with support;
 - b. the minor is an enrolled member of the Pokagon Band and has reached seventeen (17) years of age;
 - c. the minor is a resident of the state of Michigan or Indiana;
 - d. the minor has demonstrated the ability to manage his or her financial affairs through proof of employment or other means of support, but excluding any financial assistance, per capita payments, or gaming revenue sharing payments from any government;
 - e. the minor has adequate housing and the ability to manage his or her personal and social affairs, including, but not limited to, proof of housing;
 - f. the minor understands his or her rights and responsibilities under this Section as an emancipated minor.
 5. A minor who petitions the Tribal Court for emancipation shall have the burden of showing by a preponderance of the evidence that emancipation should be ordered.
 6. A minor emancipated by operation of law or by Tribal Court order shall be considered to have the rights and responsibilities of an adult, except for those specific constitutional, statutory, or regulatory age requirements regarding voting, use of alcoholic beverages, and other health and safety standards involving age limitations.

7. The parents of a minor emancipated by Tribal Court order are not liable for any debts incurred by the minor during the period of emancipation.

Section 33. Reimbursement of Costs of Care or Service

A. Authority.

1. The Tribal Court may enter an order of reimbursement requiring the parents, guardian or custodian of a child to pay the cost of care or service incurred by the Pokagon Band in connection with any action taken pursuant to this Code.
2. As used in this Code, “incurred by the Pokagon Band” means all amounts which are paid by the Pokagon Band or any other person, entity, government or agency and are reimbursed by the Pokagon Band.

B. Cost of Care or Service. The Tribal Court may include in any order of reimbursement the cost of care or service arising from the following:

1. appointment of an attorney pursuant to subsection 5.B of this Code, notwithstanding indigence;
2. appointment of a guardian *ad litem* pursuant to subsection 5.C of this Code;
3. contracts for investigative and other responsibilities pursuant to subsection 6.C of this Code;
4. determinations of paternity;
5. expert witness costs, including reports and testimony;
6. out-of-home placement, including pursuant to Section 14 of this Code;
7. medical care and treatment, including pursuant to Section 18 of this Code;
8. dental care and treatment;
9. psychological evaluations;
10. counseling and therapy; and
11. any other cost of care or service as determined by the Tribal Court.

C. Required Notice.

1. In accordance with subsection 20.F.3 of this Code, at the preliminary hearing, the Tribal Court shall advise the parents, guardian, or custodian of the requirements of

Section 32 of this Code.

2. Pursuant to Section 17 of this Code, the Tribal Court may accept transfers of jurisdiction over child custody proceedings from state court. In accordance with subsection 17.J of this Code, the Tribal Court shall advise the parents, guardian, or custodian of the requirements of Section 32 of this Code.

D. Financial Disclosure Form.

1. In any action taken pursuant to this Code, the Tribal Court shall provide the parents, guardian or custodian from whom a child was removed with a financial disclosure form as early as possible in the proceeding.
2. The parents, guardian or custodian shall complete the financial disclosure form and file the form, and all required supporting documentation, with the Tribal Court within ten (10) days of the date such form was provided by the Tribal Court.
3. The Tribal Court shall serve a copy of the financial disclosure form on all required parties, including the Department of Social Services, within ten (10) days of the date such form was provided by the Tribal Court. Service shall be in a manner authorized pursuant to subsection 12.D of this Code.

E. Reimbursement Report.

1. The Department of Social Services shall promptly review the financial disclosure report and may request additional information from the parents, guardian or custodian. The parents, guardian or custodian shall cooperate fully with all such requests for information.
2. The Department of Social Services shall promptly prepare a reimbursement report, which shall be consistent with the provisions of subsection 32.G of this Code and shall provide the reimbursement report to the Presenting Officer.
3. The Presenting Officer shall file the reimbursement report with the Tribal Court with a recommendation on the order of reimbursement. The reimbursement report shall be served on all required parties in a manner authorized pursuant to subsection 12.D of this Code, unless service is waived pursuant to subsection 12.E of this Code.

F. Motion of Presenting Officer.

1. In all actions involving a child-in-need-of-protection, the Presenting Officer shall move the Tribal Court for an order of reimbursement at the dispositional hearing; provided the reimbursement report was filed and served as required pursuant to subsection 32.E.3 above. If such filing or service did not occur, the Tribal Court shall order the Department of Social Services to comply with subsection 32.E by no later than the next review hearing.

2. At the first hearing in the Tribal Court following acceptance of the transfer of jurisdiction over a child custody proceeding, the Presenting Officer shall move the Tribal Court for entry of an order of reimbursement; provided the reimbursement report was filed and served as required pursuant to subsection 32.E.3 above. If such filing or service did not occur, the Tribal Court shall order the Department of Social Services to comply with subsection 32.E by no later than the next review hearing.
3. If the Tribal Court does not enter an order of reimbursement in accordance with subsection 32.F.1 or 2 above, as applicable, then the Presenting Officer shall move the Tribal Court for entry of an order of reimbursement by no later than the date of the next hearing.
4. Subject to the limitations of this Code, a hearing on the order of reimbursement may be combined with other hearings under this Code.

G. Order of Reimbursement.

1. The Tribal Court may include the order of reimbursement within the dispositional order or may issue a separate order of reimbursement.
2. Orders of reimbursement shall be reasonable and shall consider the income and resources of the parents, guardian and custodian, and may be based on guidelines approved by the Court of Appeals.
3. An order of reimbursement shall not exceed the total cost of care or service incurred by the Pokagon Band.
4. An order of reimbursement may require that the cost of care or service be paid in a set interval amount during pendency of the action or paid until the total cost of care or service has been paid in full.
5. The Tribal Court may structure an order of reimbursement to facilitate compliance with the Case Service Plan by the child, parents, guardian or custodian, including incorporating incentives for forgiveness of debt for the cost of care or service.
6. All orders of reimbursement shall provide that payment shall be made directly to the Tribal Court.

H. Limitations on Entry. The Tribal Court shall not enter an order of reimbursement after:

1. entry of an order terminating jurisdiction or transferring jurisdiction to another court pursuant to subsection 4.C of this Code;
2. entry of an order terminating parental rights pursuant to subsection 24.D or Section 30 of this Code; or

3. entry of an order granting emancipation pursuant to subsection 32.B of this Code.

I. Continuing Obligation.

1. The obligation of the parents, guardian or custodian to reimburse the cost of care or service shall extend to the entire period that the Pokagon Band took any action pursuant to this Code.
2. All orders of reimbursement shall remain in effect until satisfied in full or vacated by the Tribal Court pursuant to subsection 32.L.4 of this Code.

J. Billing and Disbursement

1. The Tribal Court shall ensure that all parents, guardians or custodians who are subject to an order of reimbursement are sent a monthly bill, which shall include:
 - a. date of the order of reimbursement;
 - b. amount of payment due;
 - c. due date for payment;
 - d. total cost of care or service to date;
 - e. total amount paid to date; and
 - f. total amount outstanding, including any arrearage.
2. The Tribal Court shall ensure that:
 - a. all orders of reimbursement are monitored on a regular basis to determine compliance;
 - b. funds received pursuant to orders of reimbursement are disbursed pursuant to the schedule of priorities developed by the Department of Social Services pursuant to subsection 32.K below; and
 - c. all amounts paid by any parent, guardian, or custodian which exceed the total cost of care or service are returned after entry of an order by the Tribal Court terminating jurisdiction.

K. Schedule of Priorities

1. Prior to entry of an order or reimbursement pursuant to this Section 32, the Department of Social Services shall develop and provide the Tribal Court with a

schedule of priorities governing disbursement of amounts received pursuant to orders of reimbursement.

2. The Department of Social may amend the schedule of priorities, and shall provide all such amendments to the Tribal Court. The Tribal Court shall endeavor to implement any such amendments within forty-five (45) days of receipt.

L. Review of Order of Reimbursement

1. The Tribal Court, on its own initiative, or motion of the Presenting Officer, or any parent, guardian or custodian, may hold a hearing to review the order of reimbursement.
2. The Tribal Court shall hold a review hearing prior to entry of any order terminating jurisdiction.
3. The Tribal Court may consider changes in income or circumstances, compliance with the Case Service Plan and the order of reimbursement, and other relevant matters.
4. The Tribal Court may elect to continue, amend or vacate the order of reimbursement, including forgiving debt.

M. Enforcement.

1. If any parent, guardian or custodian fails to comply with an order of reimbursement, the Tribal Court may utilize all enforcement procedures available under Pokagon Band law, including but not limited to, entering an order to show cause and exercising its power of contempt of court.
2. The Pokagon Band may file a separate action in Tribal Court against the parents, custodian or guardian of a child to recover the cost of care or service incurred by the Pokagon Band in connection with any action taken pursuant to this Code and may utilize all enforcement procedures available under Pokagon Band law. The Tribal Court shall have jurisdiction over all such actions.
3. An order of reimbursement shall constitute a judgment under the Band's Per Capita Payment Garnishment Code.

Section 34. Child Protection Records

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

2. the child's parents, guardian, or custodian;
 3. prospective adopting parent(s);
 4. the child's legal counsel or Court appointed guardian *ad litem*;
 5. Department of Social Services personnel;
 6. Tribal Police Department and other law enforcement personnel involved with the case;
 7. the Presenting Officer;
 8. Tribal Court personnel directly involved in the handling of the case; and
 9. any other person by order of the Tribal Court.
- B. Tribal Police Department Records. Law enforcement records and files concerning a child shall be kept separate from the records and files of adults, except to the extent such records are relevant to a criminal investigation. All law enforcement records concerning matters arising under this Code shall be confidential and shall not be open to inspection to any but the following persons:
1. the child who is the subject of the record;
 2. the child's parents, guardian, or custodian;
 3. the child's legal counsel or Court appointed guardian *ad litem*;
 4. Tribal Police Department and other law enforcement personnel involved with the case and, as determined by the Captain of the Tribal Police Department on a case-by-case basis, the Multidisciplinary Team;
 5. Department of Social Services personnel and the personnel of state social services agencies or state-authorized agencies involved with the case;
 6. the Presenting Officer;
 7. Tribal Court personnel directly involved in the handling of the case; and
 8. any other person by order of the Tribal Court.
- C. Department of Social Services Records. All Department of Social Service records concerning matters arising under this Code shall be confidential and shall not be open to inspection to any but the following persons:

1. the child who is the subject of the record;
2. the child's parents, guardian, or custodian;
3. the child's legal counsel or Court appointed guardian *ad litem*;
4. Tribal Police Department and other law enforcement personnel involved with the case;
5. Department of Social Services personnel, personnel of state and state-authorized social services agencies involved with the case, and, as determined by the Director of the Department of Social Services on a case-by-case basis, the Family Welfare Commission and the Child Protection Team;
6. the Presenting Officer;
7. Tribal Court personnel directly involved in the handling of the case; and
8. any other person by Tribal Court order.

Section 35. Motions for Rehearing or Reconsideration

- A. Time and Grounds. A party may seek a rehearing or reconsideration of a final Tribal court order or decision a by motion made in open court or filed within twenty-eight (28) days after entry of the order or decision stating the factual and legal basis for the relief sought. The Tribal Court may entertain an untimely motion only for good cause shown.
- B. Notice. The motion, if in writing, shall be served on all parties in accordance with the applicable requirements of Section 12 of this Code.
- C. Response by Parties. Any written responses to the motion and replies to the responses must be filed with the Tribal Court and served on all other parties within five (5) days after receipt of the motion or response.
- D. Procedure. The Judge may affirm, modify, or vacate the order or decision previously made, in whole or in part, on the basis of the record of the proceeding, the motion and all responses and replies, and any arguments at a hearing regarding the motion.
- E. Hearings. The Tribal Court may decline a request for a hearing on the motion and may rule immediately on any oral motion or take the matter under advisement before ruling on the motion. The Tribal Court shall state the reasons for its decision on the motion on the record at a hearing or in writing.
- F. Stay. The Tribal Court may stay any order or decision pending a ruling on the motion.

Section 36. Appeals

- A. Time for Taking Appeal. Any party seeking to appeal a final Tribal Court order or decision issued under this Code shall file a written notice of appeal with the Tribal Court of Appeals within twenty-eight (28) days of the final order. Notice of the appeal shall be served on the Tribal Court, all parties to the proceeding, the Department of Social Services, and the Presenting Officer.
- B. Record. A record of the proceedings shall be obtained by the party seeking the appeal and shall be filed with the Tribal Court of Appeals and served on all parties, the Department of Social Services and the Presenting Officer within thirty (30) days of the date the notice of appeal was filed. The appellant shall pay the costs of obtaining, filing, reproducing, and serving the record.
- C. Stay on Appeal. A Tribal Court order may be stayed upon order of the Tribal Court or the Tribal Court of Appeals.
- G. Conduct of Proceedings. All appeals shall be conducted in accordance with the Pokagon Band Rules of Appellate Procedure.

Section 37. Enforcement

- A. Criminal Violations. Any Indian person who intentionally violates this Code, willfully fails to comply with any provision of this Code, or willfully prevents another person from complying with any provision of this Code shall be guilty of a crime and shall be subject to a maximum fine of \$5,000 or one (1) year imprisonment, or both. Each day during which such violation continues shall constitute a separate violation of this Code.
- B. Civil Violations. Any person who intentionally violates this Code, willfully fails to comply with any provision of this Code, or willfully prevents another person from complying with any provision of this Code shall be liable for a civil fine not to exceed \$5,000. Each day during which such violation continues shall constitute a separate violation of this Code. The amount of any such civil fine may be recovered in a civil action in the Tribal Court. All civil fines accruing under this Code shall be cumulative and a suit for the recovery of one fine shall not bar or affect the recovery of any other fine, judgment, penalty, forfeiture, or damages, nor bar the power of the Tribal Court to punish for contempt, nor bar any criminal prosecution.

Section 38. Savings Clause

If any Section, subsection, or clause of this Child Protection Code shall be found by the Pokagon Band Tribal Court, Tribal Court of Appeals, or any other court of competent jurisdiction to be inconsistent with or in violation of Pokagon Band governing law or otherwise invalid or unenforceable, such Section, subsection, or clause shall be deemed to be severed and deleted from the this Code, which shall remain in full force and effect.

LEGISLATIVE HISTORY

THE “CHILD PROTECTION CODE” WAS ENACTED ON JULY 30, 2002 BY TRIBAL COUNCIL RESOLUTION No. 02-07-30-01; ON MAY 25, 2004, BY RES. No. 04-05-25-01, THE CHILD PROTECTION CODE OF 2002 WAS REPEALED IN ITS ENTIRETY AND THE CHILD PROTECTION CODE OF 2004 WAS ENACTED INTO LAW; ON JUNE 4, 2012, BY RES. No. 12-06-04-08, THE CHILD PROTECTION CODE OF 2004 WAS AMENDED WITH SUCH AMENDMENTS BECOMING EFFECTIVE ON JULY 23, 2012; ON NOVEMBER 14, 2013, BY RES. No. 13-11-14-02, THE CHILD PROTECTION CODE WAS AMENDED WITH SUCH AMENDMENTS BECOMING EFFECTIVE ON THE DATE OF AMENDMENT; ON JANUARY 9, 2017, BY RES. No. 17-01-09-01, AMENDMENTS TO SUBSECTIONS 3(A), 3(D), AND SECTION 32(A) WERE ENACTED.