

TRIBAL CODE
CHAPTER 30:
CHILD WELFARE CODE

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HISTORY NOTE:

Current Ordinance:

Resolution 2003-85, adopted June 17, 2003, adopts Tribal Code Chapter 30: Child Welfare Code and rescinds all earlier Child Welfare Codes.

Prior Ordinances:

Reenacted as part of the Tribal Code July 5, 1995, effective immediately

Resolution 94-118, adopted September 20, 1994, adopts Tribal Code Chapter 30: Child Welfare Code and rescinds all earlier Child Welfare Codes.

The Tribe's first child welfare ordinance, the Juvenile and Children's Code of the Sault Ste. Marie Tribe of Chippewa Indians, a/k/a Tribal Child Welfare Code, was adopted by Board motion on November 25, 1980.

Amendments

Resolution 2024-104, adopted April 2, 2024, amends Tribal Code Chapter 30, by adding Subchapter XVI, Tribal Customary Adoption.

Resolution 2015-254, adopted December 7, 2015, amends §30.1204 (2).

Resolution 2014-217, adopted November 25, 2014, amends §30.1206(1). Absence of Committee Chairman.

Resolution 2013-22, adopted January 15, 2013, amends §30.1201 and § 30.1204.

Resolution 2013-04, adopted January 2, 2013, amends §30.1201. And §30.1204(2)(3) and adding (4).

Resolution 2011-159, adopted July 12, 2011, amends §30.1204 and §30.1208 by reducing quorum from five to four.

Resolution 2009-258, adopted December 1, 2009, amends § 30.1203(4).

Resolution 2009-163, adopted August 4, 2009, adds § 30.1203 (4) appointing of Board Liaison.

Resolution 2006-144, adopted November 21, 2006, amends §30.1201, §30.1204 and §30.1208.

Resolution 2005-201, adopted December 6, 2005, amends §30.337, lay person designated by Prosecutor.

Resolution 2005-14, adopted February 15, 2005, amended §30.209 (4), Tribal Court may retain jurisdiction of child until age twenty (20) years of age.

Resolution 1-28-81G, adopted January 28, 1981, implemented the Code by establishing the Sault Ste. Marie Tribal Children's Tribal Court to exercise jurisdiction under the Tribal Child Welfare Code.

Resolution 1-26-83B, adopted January 26, 1983, authorized Chippewa County Department of Social Services protective services workers to act on the Tribe's behalf under the Tribal Child Welfare Code in emergency situations.

Resolution 7-27-83, adopted July 27, 1983, added an appeals section to the Code.

The next Child Welfare Code was adopted by Board motion on September 20, 1984. Amendments:

Resolution 6-17-85A, adopted June 18, 1985, added the last sentence to '30.710(3).

Resolution 6-17-85B, adopted June 18, 1985, inserted the current language of '30.301(4)(h).

Tribal Resolution 10-20-87G, adopted October 20, 1987, amended the last sentence of '30.710(3).

Tribal Resolution 10-20-87H, adopted October 20, 1987, set placement priorities for adoptive placement [now included as Subchapter XII].

Resolution 2-07-89D, adopted February 7, 1989, set foster care placement priorities, '30.1202.

Resolution 2-07-89E, adopted February 7, 1989, set adoption placement priorities, '30.1202.

Resolution 1-23-90, adopted January 23, 1990, added Subchapter XI: Foster Care Home Licensing.

Resolution No. 93-32, adopted March 22, 1993, repealed Tribal Resolutions 2-07-89D and 2-07-89E and amended "30.1201 and 30.1202.

Cases:

In the Interest of D.S.P., 166 Wis 2d 464, 480 NW2d 234 (Wis S Ct 1992). Appeal of a TPR of a tribal member's parental rights (the Tribe was not involved in the appeal). The TPR was affirmed; two tribal social services workers were 'qualified expert witnesses' under the ICWA.

In the Interest of D.S.P., 157 Wis 2d 106, 458 NW2d 823 (Wis Ct App 1990). Same case as above, in the Tribal Court of Appeals.

In the Matter of Kraft, 148 Mich App 682, 384 NW2d 843 (1986). Appeal of a TPR of a tribal member's parental rights (the Tribe was not involved in the appeal). The TPR was upheld under ICWA standards; a tribal mental health social worker is a 'qualified expert witness' under the ICWA.

In the Matter of Morgan, 140 Mich App 594, 364 NW2d 754 (1985). Appeal of the TPR of a tribal member's parental rights. The Tribe joined in the appeal. The TPR was vacated for failure to follow the ICWA standards.

TRIBAL CODE
CHAPTER 30:
CHILD WELFARE CODE

SUBCHAPTER I: PREAMBLE

30.101 Preamble.

This Chapter constitutes the law of the Sault Ste. Marie Tribe of Chippewa Indians on matters related to the care, custody and control of minor members, and children of members of the Sault Ste. Marie Tribe of Chippewa Indians. It may be cited as the Sault Ste. Marie Tribal Child Welfare Code, Tribal Code Chapter 30.

30.102 Purpose.

The Child Welfare 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 Sault Ste. Marie Tribe of Chippewa Indians.

(2) To preserve unity of the family, preferably by separating the child from his parents only when necessary.

(3) To take such actions that will best serve the spiritual, emotional, mental and physical welfare of the child and best interests of the Tribe to prevent 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 Chapter.

(6) To provide procedures for intervention in those state court proceedings regarding Indian

children and for transfer of jurisdiction over Indian children from state and other tribal courts to the Sault Ste. Marie Tribal Court whenever deemed necessary and/or appropriate.

(7) To recognize and acknowledge the Tribal customs and traditions of the Sault Ste. Marie Tribe of Chippewa Indians regarding childrearing.

(8) To preserve and strengthen the child's cultural and ethnic identity whenever possible.

SUBCHAPTER II: JURISDICTION

30.201 Territorial Jurisdiction.

The Tribal Court shall have exclusive and original jurisdiction of all child welfare proceedings, elsewhere defined in this Chapter, when the subject child is a resident of or domiciled upon the Tribal lands of the Sault Ste. Marie Tribe of Chippewa Indians.

30.202 Jurisdiction - Personal.

The Tribal Court shall have and exercise the jurisdiction asserted in the foregoing sections of this subchapter over persons in the following manner:

(1) Within the exclusive territorial jurisdiction of the Tribal Court, the Tribal Court shall have jurisdiction over proceedings involving any Indian child.

(2) Within the concurrent jurisdiction of the Tribal Court, the Tribal Court shall have jurisdiction over proceedings involving a child who is a member of the Sault Ste. Marie Tribe of Chippewa Indians or who is eligible for membership and is the biological child of a Tribal member.

(3) The Tribal Court shall also have limited personal jurisdiction of persons involved in proceedings entertained by the Tribal Court.

(4) The Tribal Court shall have ancillary jurisdiction over any parents or guardian, whether Indian or not, of a child otherwise properly within the jurisdiction of the Tribal Court, and over any other person entering an appearance in the proceeding, whether directly or through counsel, and over any person, properly served, whose compliance or cooperation with the Tribal Court's order is essential to the exercise of the jurisdiction of the Tribal Court over the proceeding of which the Tribal Court otherwise has jurisdiction.

30.203 Concurrent Jurisdiction in Case of Conflict.

In all child welfare proceedings arising within the concurrent jurisdiction of the Tribal Court, the Tribal Court shall determine, by allegations in the petition and by testimony, whether a

prior action has been commenced in a Court of the State of Michigan involving the same child. In the event such a proceeding has been commenced in a state court, the Tribal Court shall decline a petition to assert original jurisdiction, but may direct the legal representative of the Tribe to seek transfer of the case to the Tribal Court pursuant to the transfer provisions of the Indian Child Welfare Act, 25 USC §1911. If no state court proceeding has been commenced, the Tribal Court shall proceed as in cases within its exclusive and original jurisdiction, provided personal jurisdiction exists as set forth in §30.202.

30.204 Orders of Other Courts.

Orders of other courts involving children over whom the Tribal Court could take jurisdiction shall be recognized by the Tribal Court after the Tribal Court has determined:

(1) That the other court exercised proper subject matter and personal jurisdiction over the parties, and

(2) Due process was accorded to all interested parties participating in the other court's proceeding.

30.205 Tribal Interest.

Because of the vital interest of the Tribe in its children and those children who may become members of the Tribe, the statutes, regulations, public policies, customs and common law of the Tribe shall control in any proceeding involving a child who is a member of the Tribe.

30.206 Transferred Jurisdiction.

Child welfare proceedings transferred to the Tribal Court pursuant to the Indian Child Welfare Act, or the provisions of any other state or federal law shall be deemed to have been commenced within the original and exclusive jurisdiction of the Tribal Court, and further proceedings in the cause shall be identical with proceedings originally filed in the Tribal Court.

30.207 Transfer to State Court or Other Tribal Court.

In any proceedings before the Tribal Court, the Tribal Court may transfer the proceedings to an appropriate state court or another tribal court where the state or the other Indian tribe has a significant interest in the child and the transfer would be in the best interest of the child.

30.208 Transfer from Other Tribal Courts.

The Tribal Court may accept or decline, under the procedures set forth in this Code, transfers of child welfare cases from other federal, state, or tribal courts.

30.209 Jurisdiction - Subject Matter.

(1) The Tribal Court shall have and exercise the jurisdiction asserted in the foregoing sections of this Subchapter and over all proceedings under this Chapter in which it is alleged that an Indian child is alleged to be a child-in-need-of-care.

(2) The Tribal Court shall also have jurisdiction of all proceedings, otherwise within the jurisdiction of the Tribal Court, in which the following relief is sought:

(a) Termination of parental rights.

(b) Adoption of an Indian child.

(c) A determination of custody, other than in divorce, or appointment of a custodian or guardian for a child.

(d) Suspension of parental rights.

(e) Tribal Customary Adoption of an Indian Child

(3) Jurisdiction obtained by the Tribal Court over a child is retained until terminated in any of the following situations:

(a) the child becomes an adult; or

(b) the case is transferred by the Tribal Court to another tribal court; or

(c) when the Tribal Court enters an order terminating jurisdiction.

(4) Upon the motion of the prosecuting attorney or attorney for the child, and upon good cause shown, Tribal Court jurisdiction may be retained until a child reaches twenty (20) years of age. In determining whether good cause exists to retain jurisdiction beyond a child's eighteenth (18th) birthday, the Tribal Court shall consider the stated wishes of the child. The Court may continue to exercise ancillary jurisdiction over the parent of the child to ensure payment of placements costs or other costs associated with the juvenile proceeding, regardless of whether the child continues under the Court's jurisdiction.

30.210 Jurisdiction - Severability - Saving Clause.

Each of the numbered sections and subsections of this Chapter shall be deemed to be discrete and severable. If any provision of this Chapter granting or asserting jurisdiction, whether territorial, personal, subject matter or otherwise, shall be held to violate federal law or the Constitution and Bylaws of the Tribe, or the United States Constitution, by the final decision of any federal tribal court, or if any such provisions shall be held invalid by the Secretary of the Interior, the validity of

each and every other provision shall be unaffected thereby and all such other provisions shall remain in full force and effect.

SUBCHAPTER III: DEFINITIONS

30.301 General Provisions.

For the purpose of this Chapter, certain terms are defined in this subchapter. When not inconsistent with the context, words used in the present tense include the future, words in the singular number include the plural number, words in the plural include words in the singular, and words in the masculine gender include the feminine gender. The word "shall" is always mandatory and not merely directory.

30.302 Abandoned.

"Abandoned" means the failure of the parent to provide reasonable support and to maintain regular contact with his or her child when such failure resulted in destruction of the parental role with the child. Abandonment shall be judged according to customary practices in the Indian community.

30.302a Adoption.

"Adoption" means the legal practice of creating a new parent-child relationship following the termination of the birth parents(s) parental rights.

30.302b Adoptive Parent

"Adoptive Parent" means an individual who establishes and maintains a parent-child relationship with an Indian child through either adoption or tribal customary adoption.

30.303 Adult.

"Adult" means a person eighteen (18) years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.

30.304 Agency.

"Agency" means the Anishnabek Community and Family Services Department of the Sault Ste. Marie Tribe of Chippewa Indians or other appropriate agency designated by the court.

30.305 Anishnabek Community and Family Services.

"Anishnabek Community and Family Services" or ACFS provides social services for the

tribal members of the Sault Ste. Marie Tribe of Chippewa Indians.

30.306 Approved.

"Approved" means having been reviewed and accepted by a designated inspecting authority or an agency that has jurisdiction.

30.307 Caseworker.

"Caseworker" means the protective services worker, social services worker, probation officer, law enforcement personnel or any person who performs the duties and responsibilities set forth in §30.1219.

30.308 Child.

"Child" means a person who is less than eighteen (18) years old and who has not been emancipated by order of a court of competent jurisdiction or a child not born yet especially at the happening of some event.

30.309 Child Abuse.

"Child abuse" means harm or threatened harm to a child's health or welfare by a parent, legal guardian, or any other person responsible for the child's health or welfare, or by a teacher or teacher's aide, that occurs through nonaccidental physical or mental injury; sexual abuse; sexual exploitation; or maltreatment.

30.310 Child Born Out of Wedlock.

"Child born out of wedlock" means a child conceived and born to a woman who is unmarried from the conception to the birth of a child, or a child determined by judicial notice or otherwise to have been conceived or born during a marriage but who is not the issue of that marriage.

30.311 Child-in-need-of-care.

"Child-in-need-of-care" means a child:

(1) Who has no parent, guardian or custodian with legal authority able or willing to care for him.

(2) Who has not been provided with adequate food, shelter, clothing or medical care or education necessary for his health and well-being.

(3) Whose parent, guardian or custodian has knowingly, intentionally or negligently subjected the child to abuse as defined in §30.309 or place the child in a situation that endangers his life or health.

(4) Who is without proper parental care and control or supervision because of the disappearance or the prolonged absence of his parent, guardian or custodian.

(5) Whose parent, guardian or custodian is unable to provide for the child because of incarceration or hospitalization for physical or mental condition.

(6) Who has been sexually abused or exploited, negligently or intentionally by parent, guardian or custodian.

(7) Who has been placed in custodial care for the violation of the law as a result of parental pressure, guidance or approval.

(8) Who has been born and tested positive to alcohol, cocaine or any other controlled substance.

(9) Whose parents, guardian, or custodian's alcohol and other drug abuse/addiction interferes with a person's ability to meet parental responsibility and/or causes harm or threatened harm to the child.

(10) Whose parent has been convicted of a crime of a nature that demonstrates the parent's unfitness to adequately parent the child.

(11) Tribal Court jurisdiction may be established for a child whose parent's rights have been terminated involuntarily, or voluntarily at the point of involuntary termination, for another child due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

(12) Tribal Court jurisdiction may be established for a child whose parent's rights to another child have been permanently suspended for the purposes of tribal customary adoption due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

30.312 Child Passenger Restraint Device.

"Child passenger restraint device" means a device which meets all the requirements of Federal Motor Vehicle Safety Standard No. 213 entitled "Child Seating Systems", 49 C.F.R. §71.213,(1984) as amended, which performs satisfactorily in a dynamic test, and which is appropriate for the size and physical condition of the child being transported.

30.313 Child Protection Team.

The Child Protection Team is a team established to involve and coordinate the child protection services of various agencies.

30.314 Child Welfare Committee.

"Child Welfare Committee" means a committee appointed by the Tribal Board of Directors to protect the best interests of the children of the Tribe and promote the stability and security of the Tribe as set forth by this code.

30.315 Controlled Substance.

Substances identified or defined as a "controlled substance" under the provisions of P.A. 1978, No. 368 of the State of Michigan, as amended to the date of the offense.

30.316 Counsel.

"Counsel" means a person who has been recognized by the Sault Ste. Marie Chippewa Tribal Court as qualified to represent individuals in proceedings before the Tribal Court.

30.317 Court Appointed Special Advocate (CASA).

"Court Appointed Special Advocate" means a person appointed by the Tribal Court to represent the interests of a child who is before the Tribal Court.

30.318 Custodian.

"Custodian" means a person, other than a parent or guardian, to whom legal custody of the child has been given.

30.319 Custody or Legal Custody.

"Custody or legal custody" means the status created by order of the Tribal Court or any other court of competent jurisdiction. Unless otherwise specified by said court custody or legal custody vests the following rights and responsibilities:

(1) The right to have physical custody of the child.

(2) The responsibility to provide the child with food, shelter, education and ordinary medical care. In an emergency, a custodian shall have the authority to consent to surgery or other extraordinary medical care.

(3) Custody does not include powers of a guardian as listed in Chapter 33 of the Tribal Code.

30.320 Domicile.

"Domicile" means a person's permanent home, legal home or main 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 to be his permanent home.

30.321 Escalated Care.

Escalated care is considered appropriate for adolescents who are unable to tolerate the demands of family living and have emotional and/or behavioral problems that can be handled in a therapeutic setting.

30.322 Extended Family.

"Extended family" means a person who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

30.323 Father.

"Father" means a man:

(1) Married to the mother at any time from a child's conception to the child's birth unless the child is determined to be a child born out of wedlock.

(2) Who legally adopts the child.

(3) Whose paternity is established in one of the following ways within time limits, when applicable, set by the Tribal Court pursuant to this Chapter.

(a) The man and the mother of the child acknowledge that he is the child's father in a writing executed and notarized and filed in the Tribal Court or a court of competent jurisdiction.

(b) The man and the mother file a joint written request for a correction of the certificate of birth pertaining to the child that results in issuance of a substituted certificate recording the birth identifying the man as the child's father.

(c) The man acknowledges the child, without the acknowledgement of the mother,

with the approval of the Tribal Court or other court of competent jurisdiction.

(d) A man who by order of filiation or by judgment of paternity is determined to be the father of the child.

30.324 Fictive Kin.

A “fictive kin” is a person who is defined as a non-blood or non-marriage-related adult who has a psychological/emotional bond with the child and is identified as “family.”

30.324a Final Decree of Tribal Customary Adoption

"Final Decree of Tribal Customary Adoption" means the order through which the Tribal Court establishes the permanent parent-child relationship between the adoptive parent(s) and the Indian child and defines the parameters of permissible contact between the biological parent(s) and the Indian child.

30.324b Final Decree Permanently Suspending Parental Rights

"Final Order Permanently Suspending Parental Rights" means the order through which the Tribal Court permanently suspends the parent rights of the biological parent(s) to provide for the care, custody, and control of the child.

30.325 Fire Alarm.

"Fire alarm" means a device that is used to alert all persons in the home of fire conditions. The device shall be heard in all parts of the home that is used by children and care-giving staff.

30.326 Guardian.

"Guardian" means a person assigned by a Tribal Court or other court of competent jurisdiction, and having the duty and authority to provide care and control of a child as set forth in Chapters 30 and 33 of the Tribal Code.

30.327 Immediate Family.

“Immediate family” members are parents, stepparents, siblings, half-siblings.

30.328 Indian.

“Indian” means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a regional corporation as defined in §1606 of Title 43.

30.329 Indian Child.

"Indian child" means a child who is a member of a tribe or band that is acknowledged to exist as a tribe or band by the United States Secretary of the Interior or a historic tribe or band recognized by the Michigan State Indian Commission, or a child who is eligible for such membership who is the natural child of at least one parent who is a member or eligible for membership in any such tribe or band.

30.330 Judge.

"Judge" means a judge of the Sault Ste. Marie Chippewa Tribal Court.

30.331 Lay Advocate.

"Lay Advocate" means a Tribal member who represents the parents, guardians or custodians in the Tribal Court pursuant to Chapter 87.

30.332 Least Restrictive Alternative.

"Least restrictive alternative" means the placement alternative, which is the least restrictive method, in terms of restrictions to be placed upon the child and family, of obtaining the objectives of the Tribal Court and this Chapter.

30.333 Living Together Partner.

A "living together partner" includes a boyfriend or girlfriend, regardless of where the person resides, of the parent or person responsible for the child's health or welfare. If the above conditions are met the LTP is also included in the definition of a person responsible for the child's health or welfare. The following persons are excluded from the definition of LTP: the child's parents, grandparents or great-grandparents, brother or sister, aunt or uncle, or niece or nephew.

30.334 Minor.

A "minor" means a person less than eighteen (18) years of age.

30.335 Multidisciplinary Team.

A "multidisciplinary team" is a team established to assist in the prosecution of sexual and physical abuse cases.

30.336 Parent.

"Parent" means a person who is legally responsible for the control and care of the child, including a mother, father, guardian, or custodian, including a natural or adoptive parent, but does

not include persons whose parental rights have been terminated, persons whose parental have been permanently suspended, nor does it include an unwed father whose paternity has not been acknowledged or established.

30.336a Permanent Suspension of Parental Rights.

"Permanent suspension of Parental Rights" means the permanent suspension of the rights of the biological parent(s) to provide for the care, custody, and control of their child.

30.337 Prosecutor.

"Prosecutor" means the prosecuting attorney for the Sault Ste. Marie Tribe of Chippewa Indians or any person designated by the Prosecutor pursuant to §87.110(1).

30.338 Sexual Abuse.

Any conduct of a sexual nature that would be prohibited by Tribal, Federal or State law.

30.339 Tribal Court.

"Tribal Court" means the Sault Ste. Marie Chippewa Tribal Court established by Chapter 80.

30.340 Tribe.

"Tribe" means the Sault Ste. Marie Tribe of Chippewa Indians.

30.341 Tribal Council or Tribal Board.

"Tribal Council or Tribal Board" means the Sault Ste. Marie Tribe of Chippewa Indians Board of Directors.

30.342 Tribal Customary Adoption

"Tribal Customary Adoption" means a traditional tribal practice recognized by the community and tribe which establishes a permanent parent-child relationship between the Indian child and someone other than the child's birth parent(s) following the permanent suspension, but not the termination, of the parental rights of the birth parent(s).

SUBCHAPTER IV: ORGANIZATION AND FUNCTION OF THE TRIBAL COURT

30.401 Tribal Court Personnel.

(1) The judge of the Tribal Court shall have the authority and duties as set forth in this Chapter, in Tribal Code Chapter 36 and Chapter 80, or inherent in the position of Tribal judge.

(2) The Prosecutor shall represent the Tribe in all proceedings under this Chapter.

(3) The Tribal Court clerk is the clerk of the Tribal Court who shall be responsible for maintaining all child welfare records of Tribal Court. Child welfare records will be kept separate from other court records.

30.402 Taking a Child into Custody.

(1) The Tribal Court may order investigation and discovery, including but not limited to, taking of photographs, gathering physical evidence, and examinations or evaluations of a child, parent, guardian or custodian, conducted by a physician, dentist, psychologist, or psychiatrist, upon a showing of probable cause to believe that a child is a child-in-need-of-care, which may be done ex-parte.

(2) If the Tribal Court finds probable cause to believe the child is a child-in-need-of-care, and that the conditions in which the child is found present a substantial risk of harm to the child's life, physical health or mental well-being, the Tribal Court may order the child be taken into custody, upon petition by any person and signed by the Tribal Prosecuting Attorney, which may be ex-parte. The Tribal Court may include in such an order:

- (a) An authorization to enter a specified premises to remove the child,
- (b) Gather evidence, or
- (c) To place the child in protective custody pending preliminary hearing.

(3) A child may be taken into protective custody without a Tribal Court order by a law enforcement officer or caseworker if such person has probable cause to believe the child is a child-in-need-of-care, and

- (a) Failure to remove the child may result in a substantial risk of death, serious injury, or serious emotional harm, or
- (b) The parent, guardian or custodian is absent and it appears, from the circumstances, that the child is unable to provide for his/her own basic necessities of life, and no satisfactory arrangements have been made by the

parent, guardian, or custodian to provide for such necessities and no alternative arrangements, except removal, are available to protect the child.

(3) If grounds for removal are corrected, the child may be returned to the parent, guardian or custodian by the person originally authorizing removal or by the caseworker.

(5) A person who takes a child into custody without a Tribal Court order shall make reasonable efforts to provide immediate notice to the Tribal Court, parent, guardian, or custodian and/or child's Tribe if different than the Sault Ste. Marie Tribe of Chippewa Indians.

30.403 Substance Abuse Risk Assessment.

Allegations of adults and parent/caregiver's using or in possession of drugs/alcohol residing in the child's home may result in an assessment to determine whether the child is at risk.

30.404 Duty to Report.

(1) Any person who has a reasonable cause to suspect that a child is a child-in-need-of-care shall immediately make a report to the Anishnabek Community and Family Services Department or to the Tribal Police or other designated agency.

(2) Any physician, nurse, dentist, optometrist, or any other medical or mental health professional including a community health representative; volunteers working with families; school principal, teacher or other official; social workers; child day care center worker or other child care staff including foster parents; residential care or institutional personnel; counselor; peace officer or other law enforcement official including probation officer; or a member of the Child Welfare Committee; who has reasonable cause to suspect that a child may be a child-in-need-of-care shall make immediately, by phone or otherwise, a report, or cause a report to be made, of the suspected condition to the Anishnabek Community and Family Services, Tribal Police or other designated agency.

(3) A person mandated to report under §30.404(2) shall immediately report to the Anishnabek Community and Family Services if the person knows or has reason to suspect that a woman is pregnant and has abused alcohol or used a controlled substance for a nonmedical purpose during the pregnancy.

30.405 Child-in-need-of-care Report.

(1) Persons mandated to report under §30.404 shall include the following information if known:

(a) Names, addresses, and tribal affiliation of the child and his parents, guardian or custodian.

- (b) The child's age
- (c) The nature of the actual or suspected child abuse or neglect
- (d) Previous abuse or neglect of the child or his siblings.
- (e) Name, age and address of the person alleged to be responsible for the child's abuse or neglect.
- (f) Name and address of the person or agency making the report.

30.406 Medical Examinations.

(1) Anishnabek Community and Family Services may request a Tribal Court order for a medical evaluation of a child pursuant to §30.1001 of this Chapter. The caseworker shall have a medical evaluation done without a Tribal Court order if the child's health is seriously endangered and a Tribal Court order cannot be obtained.

(2) When a child suspected of a being a child-in-need-of-care is seen by a physician, the physician shall make the necessary examinations, which may include physical examinations, x-rays, photographs, laboratory studies, and other pertinent studies.

(3) The physician shall immediately report the results of the evaluation to Anishnabek Community and Family Services, law enforcement or other designated agency.

30.407 Testimonial Privileges Abrogated.

The physician-patient privilege, husband and wife privileges, or any privilege except the attorney-client privilege, both as they relate to the witness and to the exclusion of confidential communications, shall not pertain in any judicial proceeding in which a child's status as an abused or abandoned child, or a child-in-need-of-care, is an issue.

30.408 Immunities.

(1) The following persons are immune from civil or criminal liability for actions or inaction's in matters relating to child welfare:

- (a) The Child Welfare Committee and its individual members.
- (b) Judges and Tribal Court staff of the Tribal Court.
- (c) Anishnabek Community and Family Services or designated agency.

(d) Others acting on the Tribe's behalf under this Chapter.

(e) Persons filing petitions under this Chapter or providing information to Tribal authorities regarding suspected child abuse or neglect.

(2) The identity of a reporting person shall be confidential subject to disclosure only with the consent of that person or by judicial process. A person acting in good faith who makes a report and cooperates in an investigation shall be immune from civil or criminal liability.

30.409 Initiation of Proceedings by Petition.

(1) Proceedings in the Tribal Court involving child-in-need-of-care shall be initiated by the filing of a petition signed by the prosecutor, or his designee.

(2) When a child is in detention or custody, and filing of the petition is not authorized by the prosecutor, the child shall be released.

30.410 Petition Content.

(1) Petitions initiating proceedings in the Tribal Court shall contain the following information:

(a) The facts necessary to invoke the jurisdiction of the Tribal Court together with a statement that the child is a child-in-need-of-care.

(b) A plain and concise statement of facts upon which the allegations are based including the dates and the location at which the alleged actions occurred.

(c) The child's name, birthdate and location.

(d) The name and location of the child's parent or guardian, if known.

(e) The name and signature of the prosecutor who approves the petition and the date of approval.

(f) Whether the child is in custody or detention and, if so, the place and the time thereof.

(2) If the petition requests the termination of parental rights or tribal customary adoption, the petition shall meet the requirements of sub. (1) and shall contain notice of a request to terminate parental rights or notice of tribal customary adoption.

(3) The petition shall be filed with the clerk of the Tribal Court.

30.411 Amendment to Petition.

When it appears during the course of any proceeding under this Chapter that an issue has been omitted from the petition or motions and appears from the facts to be appropriate, the Tribal Court may on a motion by the prosecutor or counsel for the child amend the petition or motions, and proceed to hear and determine the additional or other issues, as though originally and properly brought.

30.412 Dismissal of Petition.

A petition alleging that a child is in need of care or supervision may be dismissed for failing to comply with the requirements of §30.410.

30.413 Summons - Service.

(1) After a petition is filed, the Tribal Court shall fix a time for a hearing and shall direct the issuance of a summons.

(2) A summons shall be issued to the child's parent or guardian when the child is alleged to be a child-in-need-of-care. A summons shall be issued to the child if over the age of twelve (12) years.

(3) A summons issued to the child's parent or guardian or to the person with whom the child resides shall require them to appear before the Tribal Court and require the person with whom the child resides to cause the child to appear before the Tribal Court unless the child's presence is excused by the Tribal Court.

30.414 Notice of Hearing.

(1) Persons Entitled to Notice: The Tribal Court shall insure that the following persons are notified of each hearing.

- (a) The parent or guardian.
- (b) The attorney for the parent or guardian.
- (c) The child or the advocate for the child.
- (d) The petitioner and/or prosecuting attorney.
- (e) The responsible child placing agency.
- (f) Any other person the Tribal Court may direct to be notified.

(2) Notice: Except for preliminary hearings, notice of hearing must be given in writing which may be on the record or mailed to this last known address at least seven (7) days prior to the hearing. At least 14 days prior to a hearing on a petition to terminate parental rights.

(3) Failure to Appear: When a party fails to appear in response to a notice of hearing, the Tribal Court may order the party's appearance by summons or subpoena.

30.415 Subpoenas.

(1) Any party or the Tribal Court on its own motion may cause a subpoena to be served on a person whose testimony or appearance is desired.

(2) A person may waive notice of hearing or service of process. The waiver shall be in writing, or on the record before the Tribal Court.

30.416 Subsequent Notices.

After a party's first appearance before the Tribal Court, subsequent notice of proceedings and pleadings shall be served on that party or, if the party has an attorney, on the attorney for the party, either personally or by ordinary mail, except that a summons must be served before trial or termination, or tribal customary adoption hearing as provided in §30.413 unless a prior Tribal Court appearance of the party in the case was in response to service by summons.

30.417 Basic Rights.

(1) At all stages of the proceedings in which a child is alleged to be a child-in-need-of-care, the child's parent or guardian shall have the right to be represented by counsel, at their own expense.

(2) In all proceedings, the child and the child's parent or guardian shall be entitled to introduce evidence, to be heard on their own behalf, and to examine witnesses.

(3) In all proceedings, the general public shall be excluded except persons whose presence is requested by a party or persons who has a direct interest in the proceeding.

(4) Any extended family member shall be permitted to attend any hearings.

30.418 Discovery.

(1) Upon written request, the respondent shall have the right to inspect, copy and photograph social, psychiatric, psychological, medical, and school reports and records concerning the child in the possession of the prosecutor or other community official assigned to the case relating to the child.

(2) If a request for discovery is refused, application may be made to the Tribal Court for an order granting discovery. Motions for discovery shall certify that a request for discovery has been made and refused.

(3) The Tribal Court may deny, in whole or part, otherwise limit or set conditions on the discovery authorized upon a showing by a party upon whom the request for discovery is made that granting discovery violates a privileged communication.

(4) On a motion of a party, the Tribal Court may permit discovery of any other materials and evidence, including untimely requested materials and evidence that would have been discoverable of right. Absent manifest injustice, no motion for discovery will be granted unless the moving party has requested and has not been provided the materials or evidence sought through an order of discovery.

30.419 Miscellaneous Hearing Procedures.

(1) Electronic Equipment - Support Person: The Tribal Court may allow the use of closed circuit television, speaker telephone, or other similar electronic equipment to facilitate hearings or to protect the parties. The Tribal Court may allow the use of videotaped statements and depositions, anatomical dolls, support persons, and take other measures to protect child witnesses.

(2) Additional Evidence: If at any time the Tribal Court believes that the evidence has not been fully developed, it may:

- (a) Examine a witness,
- (b) Call a Witness, or
- (c) Adjourn the matter before the Tribal Court, and
 - (i) Cause service of process on additional witnesses, or
 - (ii) Order production of other evidence.

(3) Expert Testimony: Subject to the Tribal Court's prior review and approval and availability of funds, an indigent parent may have appointed one expert witness of his/her own choosing whose reasonable fees and expenses, subject to the Tribal Court's prior review and approval, shall be paid from the Tribal Court funds.

(4) Impartial Questioner: Upon motion of a party the Tribal Court may appoint an impartial psychologist or psychiatrist to ask questions of a child witness at a hearing.

30.420 Putative Fathers.

(1) If at any time during the pendency of a proceeding, the Tribal Court determines that the child has no father as defined by §30.323 the Tribal Court may, in its discretion, take appropriate action as described in this Section.

(2) The Tribal Court may take initial testimony on the tentative identity and address of the natural father. If the Tribal Court finds probable cause to believe that an identifiable person is the natural father of the child, the Tribal Court will direct that notice be served on that person. The notice will include the following information:

(a) That a petition has been filed with the Tribal Court;

(b) The time and place of hearing at which the natural father is to appear to express his interest, if any, in the child; and

(c) 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 parental rights.

(3) After notice to the putative father, the Tribal Court may conduct a hearing and determine that:

(a) The putative father has been personally served or served in some manner which the Tribal Court finds to be reasonably calculated to provide notice to the putative father. If so, the Tribal Court may proceed in the absence of the putative father.

(b) A preponderance of the evidence establishes that the putative father is the natural father of the child and justice requires that he be allowed 14 days to establish his relationship to his child(ren); provided that if the Tribal Court decides the interests of justice so require, it shall not be necessary for the mother of the child to join in an acknowledgment.

(4) The Tribal Court may extend the time for good cause shown.

(a) If there is probable cause to believe that another identifiable person is the natural father of the child, the Tribal Court shall proceed with respect to the other person.

(b) If after diligent inquiry, the identity of the natural father cannot be determined, the Tribal Court may proceed without further notice.

(5) The Tribal Court may find that the natural father waives all rights to further notice, including the right to notice of termination of parental rights 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.

30.421 Failure to Appear - Notice of Publication.

When persons whose whereabouts are unknown fail to appear in response to notice by publication or otherwise, the Tribal Court need not give further notice by publication of subsequent hearings except a hearing on the termination of parental rights.

30.422 Mother or Father Without Physical Custody.

A mother or father of the child, who, at the time the child comes to Tribal Court, does not otherwise fall with the definition of parent or party, and whose parental rights over the child have not been terminated, must be notified of the first hearing on the petition. Subsequent notice need only be given when this person requests further notice.

30.423 Preliminary Hearing.

(1) If the child has been released to his/her parent, guardian or custodian, the Tribal Court shall conduct a preliminary hearing within ten (10) days after filing of the petition.

(2) If the child is placed in an out of home placement, the Tribal Court shall conduct a preliminary hearing within 48 hours of placement or upon the next working day, whichever is later, for the purpose of determining:

(a) Whether probable cause exists to believe the child is a child-in-need of care.

(b) Whether the home conditions continue to present a substantial risk of harm to the child's life, physical health or mental well-being and whether any alternatives except removal of the child is reasonably available to adequately safeguard the child from such risk.

(3) If the child's parent, guardian or custodian is not present at the preliminary hearing, the Tribal Court shall make an inquiry into what efforts have been made to notify and to obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the child's parent, guardian or custodian, the Tribal Court shall recess for not more than two (2) days, excluding Saturdays, Sundays, and legal holidays, and direct the petitioner to make continued efforts to obtain the presence of the child's parent, guardian or custodian. The preliminary hearing may be conducted in the parent's absence.

(4) The Tribal Court shall read the allegations in the petition in open Tribal Court, unless waived and shall advise the parent of the right to have counsel represent them at their own expense and their right to a trial on the allegations in the petition. After advising the parent of the right to remain silent, the Tribal Court shall allow the parent an opportunity to deny or admit the allegations

and make a statement of explanation.

(5) If the Tribal Court finds that probable cause exists to believe the child is a child-in-need-of-care the Tribal Court:

(a) Shall order the parent, guardian or custodian to appear at an adjudicatory hearing on a date and time set by the Tribal Court.

(b) May release the child in the custody of either the child's parents, guardian or custodian under such reasonable terms and conditions as are necessary for either the physical or mental well-being of the child.

(c) May order placement of the child with someone other than a parent, guardian or custodian if the Tribal Court, after hearing, determines that both of the following conditions exist:

(i) Custody of the child with parent, guardian or custodian presents a substantial risk of harm to the child's life, physical health or mental well-being and no provision of service or other arrangement except removal of the child is reasonable available to adequately safeguard the child from such risk.

(ii) Conditions of custody of the child away from parent, guardian or custodian are adequate to safeguard the child's health and welfare.

(6) 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 or guardian to undergo a substance abuse assessment, a physical, mental or psychological examination by a qualified professional.

30.424 Pleas of Responsible or No Contest.

(1) A respondent may make a plea of admission or of no contest to the original charge in the petition. The Tribal Court has discretion to allow a respondent to enter a plea of admission or a plea of no contest to an amended petition. The plea may be taken at any time after the filing of the petition provided that the petitioner and the attorney for the child have been notified of a plea offer to an amended petition and have been given the opportunity to object before the plea is accepted.

(2) Advice of Rights and Possible Disposition: Before accepting a plea of admission or plea of no contest, the Tribal Court must advise the respondent on the record or in a writing that is made a part of the file:

(a) Of the allegations in the petition;

(b) That if the Tribal Court accepts the plea the respondent will give up the right to:

(i) Trial by a judge or trial by a jury.

(ii) Have the petitioner prove the allegations in the petition by a preponderance of the evidence.

(iii) Have witnesses against the respondent appear and testify under oath at the trial.

(iv) Cross-examine witnesses.

(v) Have the Tribal Court subpoena any witnesses the respondent believes could give testimony in the respondent's favor.

(c) Of the consequences of the plea including that the plea can later be used to terminate parental rights.

(3) Voluntary Plea: The Tribal Court shall not accept a plea of admission or of no contest without satisfying itself that the plea is knowingly, understandably, and voluntarily made.

(4) Accurate Plea: The Tribal Court shall not accept a plea of admission or of no contest without establishing support for a finding that the child comes within the jurisdiction of the Tribal Court, preferably by questioning the respondent unless the offer is to plead no contest. If the plea is no contest, the Tribal Court shall not question the respondent, but, by some other means, shall obtain support for a finding that the respondent committed the offense against the child.

30.425 Adjudicatory Hearing.

(1) The Tribal Court shall conduct an Adjudicatory Hearing for the purpose of determining whether the child is a child-in-need-of-care.

(2) The Adjudicatory Hearing shall commence as soon as possible but not later than 65 days after the petition is filed with the Tribal Court.

(3) Continuances of an Adjudicatory hearing may be granted by the Tribal Court but only:

(a) Upon stipulation of the parties.

(b) Where process cannot be completed.

(c) Where the Tribal Court finds that the testimony of a presently unavailable witness is needed.

(d) One time only for up to fourteen (14) days at a parent's request for parents to

obtain counsel.

(e) For good cause shown.

(4) The general public shall be excluded from the proceedings and only the parties, their counsel, witnesses, the child advocate and other persons determined necessary or useful to the proceedings by the Tribal Court shall be admitted.

(5) All relevant and material evidence, which is reliable and trustworthy, may be admitted at the hearing and may be relied upon by the Tribal Court to the extent of its probative value.

(6) The parties shall be afforded an opportunity to examine and controvert written reports received by the Tribal Court and shall be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.

(7) The Tribal Court may rely upon conference telephone or other electronic devices that permit all those appearing or participating to hear and speak to each other.

(8) The Tribal Court may proceed with the hearing in this absence of the parent, guardian or custodian provided that proper notice was given pursuant to §30.414.

(9) If the allegations of the petition are sustained by a preponderance of the evidence, the Tribal Court shall find the child to be a child-in-need-of-care and schedule a Dispositional Hearing. The Tribal Court may also enter orders of further discovery, evaluation and assessment and other orders to protect the child.

(10) If the allegations of the petition are not sustained, the Tribal Court shall dismiss the matter and release the child.

30.426 Dispositional Hearing.

(1) A Dispositional Hearing is conducted to determine measures to be taken by the Tribal Court with respect to the child properly within its jurisdiction and, when applicable, against any adult, once the Tribal Court has determined following hearing, plea of admission or no contest that the child comes within its jurisdiction.

(2) The Dispositional Hearing may be held immediately after Adjudication. The interval, if any, between the Adjudicatory Hearing and the Dispositional Hearing is within the discretion of the Tribal Court. When the child is in placement, the interval may not be more than 35 days except for good cause shown. If the Dispositional Hearing is not held immediately after the Adjudication, notice of hearing may be given by scheduling it on the record in the presence of the parties or in accordance with §30.414.

(3) All relevant and material evidence, including oral and written reports, may be received and may be relied on to the extent of its probative value, even though such evidence may not be admissible at trial. The Tribal Court shall consider the case service plan and any report by an agency responsible for the care and supervision of the child concerning efforts, to prevent removal, or to rectify conditions that caused removal of the child from the home.

30.427 Disposition Orders.

(1) The Tribal Court shall enter an order of disposition after considering the case service plan and other evidence offered bearing on Disposition. The Tribal Court may order compliance with all or part of the case service plan and may enter such orders as it considers necessary in the interest of the child. The Order of Disposition shall state whether reasonable efforts have been made to prevent the child's removal from his home or to rectify the conditions that caused the child's removal from the home.

(2) If a child has been found to be a child-in-need-of-care, the Tribal Court may make a referral to the Michigan Department of Health and Human Services for care, custody and control or make the following dispositions which are listed by priority and shall warn about the potential consequences of not following the orders:

(a) Permit the child to remain with his/her parent(s), guardian or custodian, subject to such conditions as the Tribal Court may prescribe.

(b) Place the child with a relative within the primary service area of the Tribe, subject to such conditions as the Tribal Court may prescribe.

(c) Place the child in a licensed foster home within the primary service area of the Tribe, subject to such conditions as the Tribal Court may prescribe.

(d) Place the child in a foster home, or home of a relative, outside of the primary service area of the Tribe, subject to such conditions as the Tribal Court may prescribe.

(e) Place the child in a group home or residential care facility designated by the Tribal Court.

(f) Direct the presenting officer to file a petition to terminate parental rights under this Chapter.

(g) Inquire whether the Tribe intends to file a petition seeking an order for tribal customary adoption.

(3) If a child remains under the jurisdiction of the Tribal Court, an order may be amended or supplemented within the authority granted to the Tribal Court in this Chapter at any time as the Tribal Court considers necessary and proper and in the best interests of the child.

(4) Reimbursement for Care: Parents, custodians, or guardians may be ordered by the Tribal Court to reimburse the Tribe and/or the Michigan Department of Health and Human Services for the cost of care and placement. Reimbursement will be based on a formula to be determined by the Tribal Court.

(3) Redirect of Payments: Parents, custodians, or guardians may be ordered by the Tribal Court to make child support payments for children placed with relative or friends who are not eligible for foster care payments or payments that are not sufficient to cover the cost of caring for the children.

(4) Amendments: If a child remains under the jurisdiction of the Tribal Court, an order may be amended or supplemented at any time, as the Tribal Court considers necessary and proper.

30.428 Disposition Review Hearing.

(1) The Dispositional Order is to be reviewed at the discretion of the Tribal Court but at least once every ninety (90) days.

(2) Notice of the Review Hearing shall be provided on record or by ordinary mail as provided in §30.414.

(3) At a Review Hearing, the Tribal Court shall review on the record the compliance with the case service plan and the previous orders of the Tribal Court including:

(a) Services provided or offered to the child and his or her parent, guardian or custodian and whether they have complied with and benefited from those services.

(b) Visitation with the Child. If visitation did not occur or was infrequent, the Tribal Court shall determine why visitation did not occur or was infrequent.

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

(a) Prescribing additional services that are necessary to rectify the conditions that caused the child to become or to remain a child-in-need-of-care.

(b) Prescribing additional actions to be taken by the parent, guardian or custodian to rectify the conditions that caused the child to become or remain a child-in-need-of-care.

(5) At a Review Hearing, the Tribal Court shall determine the continuing necessity and

appropriateness of the child's placement and may order the return of the child to the custody of the parent, continue the Dispositional Order, modify the Dispositional Order, or enter a new Dispositional Order.

(6) If the child remains in placement, the Tribal Court shall determine at the Dispositional Hearing and at each Review Hearing whether the case should be reviewed before the next review hearing required under this Chapter. In making this determination, the Tribal Court shall consider, but not be limited to, both of the following:

(a) The parent's ability and motivation to make necessary changes to provide a suitable environment for the child.

(b) Whether there is a reasonable likelihood that the child may be returned to his or her home prior to the next Review Hearing required by this Chapter.

(7) An agency report filed with the Tribal Court shall be accessible to all parties to the action and shall be offered into evidence.

30.429 Permanency Planning Hearing.

(1) If a child remains adjudicated a child-in-need-of-care and parental rights to the child have not been terminated, the Tribal Court shall conduct a permanency planning hearing not more than twelve (12) months after entry of the order of removal and every ninety (90) days thereafter, so long as the child remains a child-in-need-of-care. A permanency planning hearing may be combined with a disposition review hearing under §30.426.

(2) A permanency planning hearing shall be conducted to review the status of the child and the progress being made toward the child's return to his natural parents or to some other permanent home.

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

(4) If the Tribal Court determines at a permanency planning hearing that the child should not be returned to his or her parent, the agency shall propose one of the following alternative permanent placement plans:

(a) The child be placed permanently with a relative within the primary service area

of the Tribe.

(b) The child be placed permanently with a relative who is outside the primary service area of the Tribe.

(c) The child remain in long-term foster or residential care.

(d) A petition for Guardianship under Subchapter VIII be filed by the current caretaker of the child, the child or Agency.

(e) A petition to terminate parental rights under this Chapter be filed by the Agency.

(f) A petition to seek an order for tribal customary adoption.

(5) If the Tribal Court determines that the child should not be returned to his or her parents, the Tribal Court shall order permanent placement with a relative, long term foster or residential care, or continue the child in placement with the agency for a limited period so that petitions under §30.508 may be filed.

SUBCHAPTER V: TERMINATION OF PARENTAL RIGHTS

30.501 Preferred Right of Parents.

The purpose of this subchapter is to provide for the voluntary and involuntary termination of the parent-child relationship and for the substitution of parental care and supervision by judicial process. This subchapter shall be construed in a manner consistent with the philosophy that the family unit is of most value to the community, and the individual family members, when that unit remains united and together. Termination of the parent-child relationship should be used only as a last resort, when, in the opinion of the Tribal Court, all efforts have failed to avoid termination and it is in the best interests of the child concerned to proceed under this section.

30.502 Voluntary Relinquishment of Parental Rights.

(1) Voluntary Relinquishment of Parental Rights: Parental rights may be voluntarily terminated by a parent in writing, if signed by the parent in the presence and with the approval of the Tribal Court. Relinquishment shall not be accepted or acknowledged by the Tribal Court prior to ten (10) days after the birth of the child. The Tribal Court shall ensure that the parent understands the consequences of the voluntary termination prior to approving it. A parent who wishes to relinquish his/her parental rights shall be provided an interpreter if he/she does not understand English. Prior to the entry of an order of termination, the Tribal Court shall determine that entry of such an order is in the best interests of the effected child(ren) and of the tribe.

(2) A consent shall be dated and shall positively identify the party giving the consent and the child who is being released for adoption.

(3) **Withdrawal of Voluntary Relinquishment:** A parent who has voluntarily relinquished parental rights to a child may withdraw such consent to termination of parental rights at any time prior to the issuance of a final decree of adoption and demand re-establishment of the parent-child relationship upon a showing to the Tribal Court of clear and convincing evidence that such consent was obtained by fraud or duress.

30.503 Involuntary Termination of Parental Rights.

The Tribal Court may decree a permanent termination of parental rights as provided herein concerning a child over whom the jurisdiction of the Tribal Court has been invoked under this Subchapter. The rights of one parent may be terminated without affecting the right of the other.

(a) **Fact-finding Step:** Legally admissible evidence must be used to establish the factual basis of parental unfitness sufficient to warrant termination of parental rights. The proofs must be clear and convincing.

(b) **Best Interest Step:** Once it is established that one or more grounds exists to terminate parental rights of respondent over the child, the Tribal Court shall order termination of respondents parental rights and order that additional efforts for reunification of the child with the respondent shall not be made, unless the Tribal Court finds that termination is clearly not in the best interest of the child.

30.504 Grounds for Involuntary Termination of Parental Rights.

The Tribal Court may terminate the parental rights of a parent to a child adjudicated a child-in-need-of-care if the Tribal Court finds, by clear and convincing evidence, one or more of the following:

(1) **Abandonment:** The child has been abandoned under either of the following circumstances:

(a) A parent of a child is unidentifiable and has deserted the child for twenty-eight (28) or more days and has not sought custody of the child during that period. For purposes of this section, a parent is unidentifiable if the parent's identity cannot be ascertained after reasonable efforts have been made to locate and identify the parent; or

(b) The child has a court appointed guardian and the parent has failed or

neglected to provide any substantial support for the child for two (2) years, if a support order has been entered, and the parent has regularly and substantially failed or neglected to visit, contact, or communicate with the child for two (2) years.

(2) Physical Injury or Sexual Abuse: The child or a sibling of the child has suffered physical injury or physical or sexual abuse under either of the following circumstances:

(a) A parent's act caused the physical injury or physical or sexual abuse and the Tribal Court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home; or

(b) A parent who had the opportunity to prevent the physical injury or physical or sexual abuse, failed to do so and the Tribal Court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home;

(3) Unrectified Conditions: The parent was a respondent in a proceeding brought under this chapter, twelve (12) or more months have elapsed since the issuance of an initial disposition order or removal of the child, and the Tribal Court, by clear and convincing evidence, finds either of the following:

(a) The conditions that led the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child; or

(b) Other conditions exist that cause the child to be a child-in-need-of-care. The parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice, a hearing, and been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child.

(4) Failure to Provide Proper Care: The parent, without regards to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child.

(5) Conviction of Violent or Sexual Crime: A parent of the child is convicted of a violent or criminal sexual crime against the other parent or a sibling of the child.

(6) Conviction of a Felony: A parent of the child is convicted of a felony of a nature as to prove the unfitness of the parent to have future custody of the child.

(7) Imprisonment for More than two (2) Years. The Parent will be 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.

(8) Parental Rights to Sibling Terminated. Parental rights to one (1) or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

(9) When a child has been in foster care for fifteen (15) of the most recent twenty-two (22) months.

30.505 Termination at Initial Disposition.

If a petition to terminate parental rights to a child is filed, the Tribal Court may enter an order terminating parental rights at the initial disposition hearing.

30.506 Quality of Evidence.

The same rules of evidence which apply at adjudication shall apply in termination of parental rights proceedings.

30.507 Contents of Petition.

The petition for termination of parental rights filed pursuant to this Subchapter shall include to the best information and belief of the petitioner:

- (1) the name and address of the petitioner;
- (2) the name, sex, date and place of birth and location of the child;
- (3) facts establishing the Tribal Court's jurisdiction;
- (4) the relationship of the petitioner to the child;
- (5) the names and addresses and location of the parents if known;
- (6) the names and addresses of the person having legal custody or guardianship of the child;
- (7) the grounds on which termination of the parent-child relationship is sought.

30.508 Supplemental Petitions for Termination of Parental Rights.

(1) If the parental rights of the respondent over the child are not terminated at the initial dispositional hearing, and the child is in foster care in the temporary custody of the Tribal Court, the Tribal Court following a dispositional review hearing or a permanency planning hearing may take action on a supplemental petition that seeks to terminate parental rights of respondent over the child on the basis of one or more grounds.

(2) Hearing on Petition: The hearing on a supplemental petition for termination of parental rights under this subchapter must be held within 42 days after the filing of the supplemental petition. The Tribal Court may, for good cause shown, extend the time period for an additional 21 days.

(3) Admissible evidence must be introduced to prove the fact(s) alleged in the supplemental petition.

30.509 Notice of Hearing on Termination of Parental Rights.

(1) After the petition is filed, the Tribal Court shall set a time for a hearing to determine whether the rights of a parent to a child should be terminated.

(2) Notice in writing of the hearing shall be sent to the child and the parent(s) in the manner prescribed by this Chapter, Tribal Court rule or the Tribal Court.

(3) The hearing shall be conducted in the manner prescribed by this Chapter, Tribal Court rule or the Tribal Court.

(4) A record of the proceedings shall be made and the parties shall be advised of their basic rights, including assistance of counsel.

30.510 No Jury Trial.

There shall be no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship.

30.511 Order Terminating Parental Rights.

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

(2) Every order terminating the rights of one or both parents shall be in writing and shall include facts upon which the decree is based. An order terminating the parent-child relationship shall divest the parent and the child of all legal rights, privileges, duties and obligations with respect

to each other but shall not disentitle a child to any benefit due the child from any third person, agencies, state or the United States, nor shall any action under this Code be deemed to effect any rights and benefits that the child derives from the child's descent from a member of a federally recognized Indian tribe.

30.512 Advise of Right to Appeal.

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

30.513 Action of Tribal Court After Termination.

Upon the entry of an order terminating the rights of a parent or parents the Tribal Court may either:

- (1) place the child for adoption under the appropriate proceedings; or
- (2) place the child; or
- (3) continue the child in the custody of the remaining parent.

30.514 Post Termination Review Hearings:

If a child remains a ward of the Tribal Court following the termination of parental rights to the child, the Tribal Court shall conduct a review hearing, at least every ninety-three (93) days to review the progress towards permanent placement of the child. The Tribal Court shall make findings on whether reasonable efforts have been made to establish permanent placement for the child and may enter such orders as it considers necessary in the best interests of the child.

SUBCHAPTER VI: PLACEMENT PREFERENCES

30.601 Applicability.

(1) This Subchapter shall apply to all child custody proceedings under the Indian Child Welfare Act, 25 USC §1901 *et seq.*, as to which the Sault Ste. Marie Tribe of Chippewa Indians is the Indian child's tribe.

(2) The placement preferences set forth in §30.602 constitute the codification of the order of preference established pursuant to Resolution 93-32. They are adopted by the Tribe pursuant to 25 USC §1915(c) and are binding upon agencies and courts.

30.602 Foster Care and Adoption Placement Preferences.

(1) The Tribe's first priority for adoption and foster care placement is for placement of tribal children through the Binogii Placement Agency.

(2) In order to accomplish the purposes of the Indian Child Welfare Act and to maintain contact with the Indian culture, a child placement agency shall place a child consistent with the following placement priorities, unless waived by the Sault Tribe Child Welfare Committee:

(a) The first priority is for placement with extended family in the immediate area as follows:

- (i) grandparents;
- (ii) aunts/uncles;
- (iii) brothers/sisters; and
- (iv) first cousins to the child.

(b) The second priority is for placement in the immediate area as follows:

- (i) an Indian family;
- (ii) a non-Indian family.

(c) The third priority is for placement with an Indian family outside the immediate area.

(d) The fourth priority is for placement in the best interest of the child as determined by the Child Welfare Committee.

SUBCHAPTER VII: ADOPTION

30.701 Purpose.

The purpose of this Subchapter is to protect the rights and the welfare of Indian children, natural parents, and adoptive parents. It is the policy of the Tribal Board of Directors to promote the adoption of Indian children by members of the Tribe.

30.702 Who May be Adopted.

Any child who is a member of the Tribe or eligible for membership and who comes within the jurisdiction of the Tribal Court.

30.703 Who May Adopt.

Subject to the approval of a licensed child placement agency, any of the following persons are eligible to adopt a child:

- (1) Any adult member of the Tribe is eligible to adopt a child.
- (2) A husband and wife may jointly adopt children but a person may not adopt a child without approval of the adopting person's spouse.
- (3) In extraordinary circumstances as determined by the Tribal Court, when the best interests of the Tribe and/or the child require, non-members shall be eligible to adopt children.

30.704 Petitions for Adoption.

(1) A petition for adoption shall be verified by the petitioner, signed by the spouse and the petition shall specify:

- (a) The full names, ages and place of residence and marital status of the petitioner and the relationship, if any, to the child to be adopted.
- (b) The Indian tribal membership status of the child and of the petitioner.
- (c) The date, if applicable, when the child first was placed or lived with the petitioner.
- (d) The date and place of birth of the child if known to the petitioner.
- (e) The adoptive name of the child if a change of name is desired.
- (f) That it is the desire of the petitioner to adopt the child, and approved by the spouse of the petitioner.
- (g) A full description and statement of the value of all property owned or possessed by the child, if known by the petitioner.
- (h) The status of parental rights of the adoptive parents.
- (i) Full disclosure of any fees or anything of value given or paid in connection with the adoption of the child.

(3) Any written consent required by this Chapter may be attached to the petition or may be filed with the Tribal Court at or prior to the hearing.

30.705 Consent to Adoption; Who Shall Consent; Waiver.

(1) No adoption shall be granted unless a voluntary relinquishment to adopt has been obtained and filed with the Tribal Court from the following:

(a) From both natural parents, if living:

(i) Relinquishment is not necessary from a parent who has been declared incompetent by a court of competent jurisdiction, and it appears to the Tribal Court on reliable medical evidence that the incompetence is in all likelihood permanent.

(ii) Relinquishment is not necessary from a parent whose parental rights have been terminated by a court of competent jurisdiction.

(iii) Relinquishment of a father of a child born out of wedlock is governed by §30.420.

(b) From an agency which has been given consent to place the child for adoption by the parent or parents whose relinquishment would be necessary under sub. (a), or which has been authorized in other legal proceedings to place the child for adoption.

(2) If the child is twelve (12) years of age or older, the child shall not be adopted without the child's consent. Such consent shall be given in Tribal Court or in such other form as the Tribal Court may direct.

(3) The Tribal Court may waive any requirement for the consent of any person, except a natural parent of the child, when after a hearing the Tribal Court determines that the interests of the child will be promoted thereby. In such a case, the Tribal Court shall make written findings of all facts upon which its order is founded.

30.706 Investigation and Reports.

Upon the filing of a petition for adoption, the Tribal Court may request the caseworker handling the adoption to inquire into, investigate, and report to the Tribal Court and the Child Welfare Committee the stability of the adoptee for adoption, the financial ability, moral and physical fitness, and general background of the adopting parent (s); and make recommendations on the proposed adoption. 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.

30.707 Recommendation of the Indian Child Welfare Committee.

Upon completion of the investigative report, the Tribe's caseworker shall submit his/her report to the Child Welfare Committee and the committee will formulate a recommendation for the Tribal Court.

30.708 Hearing on Adoption Petition.

(1) Tribal Court Initial Hearing: Within ten (10) days of the receipt of the petition for adoption the Tribal Court shall schedule a hearing on the petition of adoption.

(a) Notice. The adoptee, adopting parent (s), and all other interested parties shall be given notice of the hearing.

(b) Appearance Mandatory: The adoptee and adopting parent (s) shall appear in person at the initial hearing.

(2) 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 Child Welfare Committee recommends adoption at the initial hearing, the Tribal Court, upon a motion by the presenting officer, may waive the trial custody period and the final adoption decree may be entered at the initial hearing.

(3) Final Hearing if Trial Custody Period Not Waived: Not less than ninety (90) days, nor more than one hundred twenty (120) days, after the adoptee has been in the custody of the adoptive parent (s), the adoptive parent (s) shall appear before the Tribal Court. The Tribal Court shall hear testimony about the welfare of the adoptee and the current status of the adoptive home, and the desire of the adoptive parent (s) to finalize the adoption.

(5) 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 adoption decree may be entered. The Tribal Court may order, or adoptive parent (s) may request, a six (6) month extension of the trial custody period, after which a final adoption decree must be entered or the adoptee returned to the custody of the Tribal Court.

30.709 Effect of the Final Decree of Adoption.

(1) Parent and Child Relationship: After the final decree of adoption is entered, the relation of parent(s) and child and the rights, duties and other legal consequences of a natural relationship of child to parent(s) shall thereafter exist between the adoptee and the adoptive parent (s).

(2) Tribal Status Not Effected: The status as a member of the Tribe shall not be effected by adoption. An adoptee who is eligible for membership in the Sault Ste. Marie Tribe of Chippewa Indians shall be enrolled as a tribal member prior to the finalization of the 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 adoptive parent, shall be relieved of all parental responsibilities for such adoptee and have no right regarding the adoptee or right to inherit his/her property by descent or distribution.

(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 Tribal Court orders otherwise.

(5) Adoptees shall be entitled to the same rights of person and property as children or heirs of the adoptive parents. However, if an inheriting adoptee is not a member of, or eligible for membership in the Sault Ste. Marie Tribe of Chippewa Indians, then said child may not be eligible to inherit any

interest which the deceased member's estate may have to any Tribal privilege, right, land or property of any kind.

(6) Adoptees shall be entitled to the society and companionship of their natural siblings.

30.710 Withdrawal or Denial of Petition; Custody.

Consent to adoption may be withdrawn by a parent (s) whose parental rights have not been terminated, at any time before the entry of the final order of adoption.

30.711 Confidentiality of Proceedings and Record.

Unless the Tribal Court otherwise orders, hearings held in proceedings under this Section shall be confidential and shall be held in closed session, without admission of any persons other than the interested parties and witnesses. All papers, records, petitions, or files pertaining to proceedings, except the final order of adoption, shall be maintained by the Tribal Court in locked files and shall not be released to anyone, except pursuant to Tribal Court order or consent of the adoptee executed after the adoptee attains the age of eighteen (18).

30.712 Dismissal After Death; Exception.

In the event of the death of the petitioner prior to adoption, the petition shall be dismissed, except if there are two petitioners, the proceeding shall continue as the petition of the surviving petitioner unless withdrawn by the survivor.

30.713 Irregularities; Curative Period.

After one year from the date an adoption decree is entered, any irregularity in the proceeding shall be deemed cured and the validity of the decree shall not thereafter be subject to attack on any such ground in any collateral or direct proceeding.

SUBCHAPTER VIII: POWER OF ATTORNEY AND GUARDIANSHIP

30.801 Power of Attorney.

A parent, guardian, or custodian, including Anishnabek Community and Family Services, by a properly executed power of attorney, may delegate to another person, powers of a parent regarding the care, custody and property of a child child. Said powers include but are not limited to the following: the 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 six (6) months from the date of execution and may be revoked in writing at anytime 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 the re-execution of the document.

30.802 Limited Guardianship.

The Tribal Court may appoint a temporary guardian under such terms and conditions as the Tribal Court sets forth in a written order. A temporary guardianship may be terminated if the Tribal Court determines that it is in the best interests of the child to change custody from the temporary guardian to a new guardian or to return the child to the parent, guardian, or custodian. The parent and child’s extended family shall be granted liberal visitation rights unless deemed inappropriate by the Tribal Court. A temporary guardianship shall be established by parental consent only, and shall be revocable by the Tribal Court upon parental request.

30.803 Full Guardianship.

The Tribal Court, when it appears necessary or convenient, may appoint guardians for persons under the Tribal Court’s jurisdiction. Unless otherwise specified by the Tribal Court, a guardian appointed shall be responsible for the care, custody and education of the child until such child arrives at the age of eighteen (18) years, dies, is emancipated by the Tribal Court, or until the guardian is legally discharged.

(1) Grounds: The Tribal Court may appoint a guardian for a child if either of the following circumstances exist:

(a) Parental rights of both parents or of the surviving parent, have been terminated or suspended by prior Tribal Court order, by judgment of divorce or separate maintenance, by death, by judicial determination of mental incompetence, by disappearance, abandonment, or by confinement in a place of detention; or

(b) The appointment is necessary for the immediate physical well being of the child.

(2) Who May File: Any person, including Anishnabek Community and Family Services may file a petition for guardianship. The petition shall be initiated either by the proposed guardian or by the child if at least fourteen (14) years of age.

(3) Parental appointment of guardian for child: The parent of an unmarried child may

appoint a guardian for the child by will or by another writing signed by the parent and attested by at least two (2) witnesses if both parents are dead or have been adjudged to be legally incapacitated or the surviving parent has no parental rights or has been adjudged to be legally incapacitated. A parental appointment becomes effective when the guardian's acceptance is filed in the Tribal Court in which a nominating instrument is probated or, in the Tribal Court at the place where the child resides or is present. If both parents are dead, an effective appointment by the parent who died later has priority.

(4) Upon acceptance of appointment, the guardian shall give written notice of acceptance to the child and to the person having the child's care or the child's nearest adult relative.

(5) Objection by child of fourteen (14) years or older to parental appointment: A child fourteen (14) years of age or older who is the subject of a parental appointment may prevent an appointment or cause it to terminate by filing with the Tribal Court in which the nominating instrument is filed a written objection to the appointment before it is accepted or within twenty-eight (28) days after its acceptance. An objection may be withdrawn. An objection does not preclude appointment of the parental nominee or another suitable person by the Tribal Court in a proper proceeding.

(6) Tribal Court appointment of guardian of child and priority of child's nominee. The Tribal Court may appoint as guardian a person whose appointment serves the child's welfare, including a professional guardian. If the child is fourteen (14) years of age or older, the Tribal Court shall appoint a person nominated by the child, unless the Tribal Court finds the appointment contrary to the child's welfare.

(7) Notice: Before appointing a guardian, the Tribal Court must give reasonable notice to all interested parties, including but not limited to, custodians, agencies and person having the care of the child, to the child, and to other relatives of the child as the Tribal Court may deem proper.

(8) Contents of Petition: The petition for guardianship shall include the following to the best of the petitioner's knowledge, information and belief:

(a) The full name, sex, date and place of birth, residence and tribal affiliation of the proposed ward.

(b) The full name, address, tribal affiliation, relationship, if any, to the child, and interest in the proceeding of the petitioner.

(c) The names and addresses of the child's parents, if living, and of other persons known to have an interest in the petition for appointment of guardian; the name and date of death of the child's deceased parent or parents, if appropriate.

(d) The basis for the Tribal Court's jurisdiction.

(e) The name and address of the person or agency having legal or temporary custody of the proposed ward.

(f) A statement of the reason that the appointment of a guardian is sought and whom the petitioner recommends to have appointed as guardian.

(g) A full description and statement of value of the child's assets and liabilities with an estimate of the value of any property owned, possessed, or in which the proposed ward has an interest, including any income and accounts receivable to which the proposed ward is entitled.

(h) Tribal identification verification.

(10) Certified Petition: All petitions must be dated, signed, and certified by the petitioner and notarized or witnessed by a clerk of the Tribal Court. It is not necessary to have the prosecutor sign a petition for guardianship.

30.804 Powers and Duties of Guardian.

(1) To the extent that it is not inconsistent with the terms of any order of the Tribal Court, a guardian has the following powers and duties:

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

(b) In arranging for a place of abode, the guardian shall give preference to places within the Tribal Lands over places not on the Tribal Lands, if both on Tribal Lands and off Tribal Lands places are substantially equivalent.

(c) The guardian shall have authority to consent to any medical, legal, psychological, or other professional care, counsel, treatment, or service for the ward. The guardian may give any other consent or approval in the ward's best interest. The guardian may petition the Tribal Court for approval of the consent or approval.

(d) By accepting a parental or Tribal Court appointment as guardian, a guardian submits personally to the Tribal Court's jurisdiction in a proceeding relating to the guardianship that may be instituted by an interested person. The petitioner shall cause notice of a proceeding to be delivered to the guardian or mailed to the guardian by first-class mail at the guardian's address listed in the Tribal Court records and to the address then known to the petitioner.

Letters of guardianship must indicate whether the guardian was appointed by Tribal Court order or parental nomination.

30.805 Reimbursement.

The guardian is entitled to be reimbursed out of the ward's estate for reasonable and proper expenditures incurred in the performance of his/her duties. The Tribal Court may order monthly reimbursement payments to the guardian upon request, subject to the availability of funds.

30.806 Conservatorship.

The Tribal Court may upon the filing of a petition similar to a petition for guardianship, appoint a conservator for a child, if in the Tribal Court's opinion, a guardianship is not necessary. A conservator shall not have authority over the person but shall be responsible for marshaling and preserving the assets of the child and paying for the legitimate expenses incurred in the care and maintenance of the child, subject to the availability of funds.

30.807 Reports.

All limited guardians, guardians, and conservators shall file annual reports with the Tribal Court providing an update on the condition of the ward and accounting for funds collected and funds expended on behalf of the ward. The reports shall be available for review by interested parties.

30.808 Annual Review Hearings.

Annual review hearings shall be scheduled in conjunction with the filing of annual reports by limited guardians, guardians and conservators. Any interested party may request additional hearings.

30.809 Resignation.

Any limited guardian, guardian, or conservator who wishes to resign, may petition the Tribal Court setting forth the reasons for the request. The Tribal Court shall review a final accounting prepared by the limited guardian, guardian, or conservator. If the Tribal Court is satisfied, it may accept the resignation; discharge the limited guardian, guardian, or conservator. The limited guardian, guardian, or conservator remains liable for all matters occurring from the time of appointment to the time of discharge.

30.810 Appointment of Successors.

Upon the removal, death, or resignation of a limited guardian, guardian, or conservator, the Tribal Court shall appoint a successor following the same criteria provided for in the original

appointment.

30.811 Fiduciary Duty.

All persons acting under a power of attorney, limited guardians, guardians, conservators and any person or agency appointed to act on behalf of a child under this Code acts in a fiduciary capacity. As a fiduciary, one owes a duty to act in the best interest of the child, exercising sound judgment and avoiding conflicts of interest. Any person acting under a power of attorney, limited guardian, guardian, or conservator, breaching his/her fiduciary duty will be liable for any damages resulting from such breach.

SUBCHAPTER IX: EMANCIPATION

30.901 Purpose.

A child over the age of 16 years may petition the Tribal Court for emancipation. The Tribal Court shall grant such status when the child proves to the Tribal Court that the child is capable of functioning as an independent and responsible member of the community.

30.902 Petition for Emancipation.

(1) A child seeking emancipation shall file a petition for emancipation in Tribal Court. The petition shall be signed by the Tribal Prosecuting Attorney and verified by the child, and shall include all of the following information:

(a) The child's full name and birth date, and the county and state where the child was born.

(b) A certified copy of the child's birth certificate.

(c) The name and last known address of the child's parents, guardian, or custodian.

(d) The child's present address, and length of residency at that address.

(e) A declaration by the child indicating that he or she has demonstrated the ability to manage his or her financial affairs. The child may include any information he or she considers necessary to support the declaration.

(f) A declaration by the child indicating that he or she has the ability to manage his or her personal and social affairs. The child may include in this section any information he or she considers necessary to support the declaration.

(g) Tribal identification verification.

(2) The petition shall include an affidavit by any of the following individuals declaring that the individual has personal knowledge of the child's circumstances and believes that under those circumstances emancipation is in the best interests of the child:

- (a) Physician
- (b) Nurse
- (c) Member of the clergy
- (d) Psychologist
- (e) Family Therapist
- (f) Social worker
- (g) Certified social worker
- (h) Social work technician
- (i) School administrator
- (j) School counselor
- (k) Teacher
- (l) Law enforcement officer
- (m) Duly regulated child care provider

(3) A copy of the petition and a summons to appear at the hearing shall be served on the child's parents and guardian. A notice of hearing shall be sent to the individual who provided the affidavit.

30.903 Powers of the Tribal Court.

- (1) After the petition is filed, the Tribal Court may do one (1) or more of the following:
 - (a) Assign an employee of the Tribal Court to investigate the allegations of the petition and to file a report containing the results of the investigation with the Tribal Court.

(b) Appoint legal counsel for the child.

(c) Appoint legal counsel for the child's parents or guardian if they are indigent and if they oppose the petition

(d) Dismiss the petition if the child's custodial parent does not consent and is providing support.

30.904 Emancipation Hearing.

(1) The hearing shall be before a judge sitting without a jury.

(2) The Tribal Court may issue an emancipation order if it determines that emancipation is in the best interest of the child and the child establishes all of the following:

(a) That the child's parent or guardian does not object to the petition; or if a parent or guardian objects to the petition, that the objecting parent or guardian is not providing the child with support.

(b) That the child is at least Sixteen (16) years of age.

(c) That the child is a member of the Tribe.

(d) That the child has demonstrated the ability to manage his or her financial affairs, including proof of employment or other means of support. "Other means of support" does not include general assistance or aid to families with dependent children administered under the social welfare act, Act No. 280 of the Public Acts of 1939, being §400.1 to §400.121 of the Michigan Compiled Laws as amended.

(e) That the child has the ability to manage his or her personal and social affairs, including, but not limited to, proof of housing.

(f) That the child understands his or her rights and responsibilities under this act as an emancipated child.

(3) A child who petitions the Tribal Court for emancipation shall have the burden of showing by clear and convincing evidence that emancipation should be ordered.

(4) If the Tribal Court issues an emancipation order, the Tribal Court shall retain a copy of the order until the emancipated child becomes twenty-one (21) years of age.

(5) An emancipation obtained by fraud is voidable. Voiding such an order does not affect an obligation, responsibility, right, or interests that arose during the period of time the order

was in effect.

(6) The child or a parent or guardian of the child may file an appeal from the Tribal Court's grant or denial of an emancipation petition. The appeal shall be filed in the Tribal Court of Appeals.

SUBCHAPTER X: ADDITIONAL MATTERS

30.1001 Authorization of Medical Treatment.

(1) At any time, regardless of whether a child is under the authority of the Tribal Court, the Tribal Court may authorize medical or surgical care for a child when:

(a) A parent, legal guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case.

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

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

(3) After entering any authorization under this section, the Tribal Court shall relay the circumstances, finding and authorization to be given to the appropriate physician, hospital or both.

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

30.1002 Contempt of Tribal Court.

(1) Any willful disobedience or interference with any order of the Tribal Court constitutes contempt of court.

(2) The Tribal Court may punish an act of contempt of court in accordance with the Tribal Code Chapters 70, 71 and 80.

30.1003 Tribal Court Appeal.

Any party to a Tribal Court hearing may appeal a final Tribal Court order pursuant to Chapter 82 of the Tribal Code.

30.1004 Rehearings.

(1) Time and Grounds. A party may seek a rehearing or new trial by filing a written motion immediately after a hearing on record without notice or written argument stating the basis for the relief sought. The Tribal Court may entertain an untimely motion for good cause shown. A motion will not be considered unless it presents a matter not previously presented to the Tribal Court, or presented but not previously considered by the Tribal Court, which if true, would cause the Tribal Court to reconsider the matter.

(2) Notice. All parties must be given notice of the motion for rehearing or new trial in accordance with §30.414.

(3) Response of Parties. Any response by parties must be in writing, filed with the Tribal Court, and served on the opposing parties within five (5) days after receipt of notice of the motion.

(4) Procedure. The judge may affirm, modify, or vacate the decision previously made, in whole or in part, on the basis of the record, the memoranda prepared, or a hearing of the motion, whichever the Tribal Court in its discretion finds appropriate.

(5) Hearings. The Tribal Court need not hold a hearing before ruling on a motion for rehearing or new trial. Any hearing conducted shall be in accordance with the rules for disposition hearings. The Tribal Court shall state the reason for its decision on the motion on the record or in writing.

30.1005 Effect of Proceedings.

(1) An adjudication under this Chapter shall not be considered to be a conviction of a crime.

(2) Hearings pursuant to this Chapter are closed. All records shall be sealed. Upon motion and for good cause the Tribal Court may open child welfare records for use in other proceedings.

SUBCHAPTER XI: RECORDS

30.1101 Records.

(1) A record of all hearings held under this Chapter shall be made and preserved by stenographic, mechanical or electronic recording.

(2) The official Tribal Court file for a proceeding shall include complaints, petitions, motions, memoranda, briefs, reports, findings of the Tribal Court, Tribal Court orders and other reports and paper filed with the Tribal Court.

(3) The official Tribal Court files shall be open to inspection by the child, the child's parent or guardian, their counsel and officials of the Tribal Court.

(4) Adoption records shall be sealed upon final order by the Tribal Court and only opened pursuant to Chapter 35 of the Tribal Code.

30.1102 Expungement.

(1) When a child who has been the subject of a proceeding before the Tribal Court attains his eighteenth (18th) birthday, the chief judge shall order the clerk of the Tribal Court to destroy the Tribal Court records.

(2) As used in this section, "expungement" means the physical destruction of files and records.

SUBCHAPTER XII: COMMITTEES AND WORKERS

30.1201 Child Welfare Committee.

There is hereby established a Sault Ste. Marie Tribe of Chippewa Indians Child Welfare Committee (hereinafter called the Committee) consisting of ten (10) members appointed by the Tribal Chairman with the advice and consent of the Tribal Board of Directors.

30.1202 Purpose of the Child Welfare Committee.

Children are the Tribe's most vital and cherished resource. The Tribe's future depends on the health and well-being of its children. Children have a sacred right to receive the care and guidance necessary for their spiritual, emotional, mental and physical development. The purpose of the Child Welfare Committee created under this code is to protect and promote the welfare of Tribal children and families by fully exercising the Tribe's rights and responsibilities under the Indian Child Welfare Act of 1978 and Tribal Law.

30.1203 Membership and Terms.

(1) Members of the Committee shall hold office for staggered terms of four (4) years.

(2) Members of the Committee shall hold office until their respective successors have been appointed.

(3) Renewal of past membership are nominated by the Committee and reaffirmed by the Board of Directors.

(4) The Board of Directors for the Sault Ste. Marie Tribe of Chippewa Indians shall appoint a Board Liaison to the Child Welfare Committee.

(a) **Qualifications.** The Board Liaison shall be a member of the Board of Directors for the Sault Ste. Marie Tribe of Chippewa Indians.

(b) **Selection Process.**

(i) The Board of Directors shall have sole discretion in choosing which Board member to appoint as Board Liaison to the Child Welfare Committee.

(ii) The Board of Directors may seek advice and input from the Child Welfare Committee.

(c) **Term of Service.** The Board Liaison shall serve not less than a one-year term, and no more than three consecutive one-year terms.

(d) **Duties.**

(i) The Board Liaison shall be a voting member of the Child Welfare Committee.

(ii) The Board Liaison shall attend all meetings of the Child Welfare Committee, unless excused by the Board of Directors.

(iii) The Board Liaison shall make reports to the Board of Directors about the operation and functions of the Child Welfare Committee. Such reports shall not breach any confidentiality regarding Child Welfare Committee business.

(e) **Confidentiality.** The Board Liaison shall be bound by the same confidentiality rules and requirements that apply to other members and participants of the Child Welfare Committee.

30.1204 Meetings.

(1) The Committee shall hold at least one meeting each month and such additional meetings as necessary.

(2) Any member of the Committee who has (3) absences within any twelve (12) month period shall forfeit membership with the Committee. Arriving in excess of one (1) hour after the

commencement of any meeting shall be considered an absence for the above purposes.

(3) A quorum shall consist of a majority of those members appointed and serving on the Committee..

(4) No later than the 10th day of each month, the Chairperson of the Committee shall submit a report to the Board of Directors listing the attendance record of the committee members at all meetings held during the preceding month.

30.1205 Officers.

(1) The Committee shall designate one member of the Committee to be its Chairperson.

(2) The Committee shall designate one member of the Committee to be its Secretary.

30.1206 Duties of the Officers.

(1) The Committee Chairman shall preside over all meetings of the Child Welfare Committee, provided that, in the absence of the Committee Chairman, the duties of the Chairman shall be carried out by the committee member who is present and who has been a member of the Child Welfare Committee for the longest duration.

(2) The Committee Chairman shall call all meetings.

(3) The Committee Secretary shall keep a complete and accurate record of all meetings.

30.1207 Duties of the Child Welfare Committee.

The Committee shall have the responsibilities of:

(1) Monitor placement of children in all child custody proceedings.

(2) Make recommendations to the Tribal Court concerning adoptions, guardianship, or termination of parental rights, or regarding the appropriate disposition of any child-in-need-of-care.

(3) Establish Tribal policies and priorities regarding implementation of the Indian Child Welfare Act, and create exceptions to such policies.

(4) Make recommendations regarding intervention in state court proceedings and transfers to Tribal Court.

(5) Engage in such further activities as to protect and improve the welfare of minor members of the Tribe.

(6) Testify, when necessary, regarding the Committee recommendations.

30.1208 Voting.

(1) Actions of the Child Welfare Committee shall be decided by a majority vote of those present at the meeting. The chairperson shall vote to break a tie vote of the committee.

(2) A quorum shall consist of four (4) members including the chairperson. Any action by less than a quorum must be ratified by nonattending members before such actions shall become official. Ratification may be by telephone or personal contact.

30.1209 Committee Members are not Investigators.

Child Welfare Committee members shall not initiate on their own, the gathering of information regarding the matter under review. All members shall have access to the same information. If Child Welfare Committee members are contacted outside of a review by an interested party, he/she shall refer the party to the caseworker, social worker, client advocate, or foster care program office as appropriate. The Committee, however, may request that further information be provided or that further investigation be conducted by the social or other appropriate authority.

30.1210 Conflicts of Interest.

(1) Child Welfare Committee members who are foster parents or parent and child advocates may not participate as committee members in the review of children who are in their own care.

(2) A Child Welfare Committee member may not participate in the discussion and may not vote on actions involving the committee member's immediate family, including children, grandchildren, nieces, nephews, and siblings.

30.1211 Confidentiality.

(1) Meetings of the Child Welfare Committee shall not be open to the public, except for person authorized to attend by the Child Welfare Committee.

(2) Confidentiality of case information and other Child Welfare Committee records shall be maintained. Child Welfare Committee members are subject to the same standards of confidentiality as other Tribal Court personnel, Anishnabek Community and Family Service workers and other professionals working in the foster care and child protection system.

(3) Case materials and all other Child Welfare Committee records shall be kept in a secure area. The Committee Chairperson shall collect case plan packets at the conclusion of the Child

Welfare Committee meetings so that no reports leave the meeting and all written reports are maintained in confidence. Written material may be provided to committee members in advance of meetings, however.

30.1212 Child Protection Team.

The Child Protection Team may include, in appropriate cases, the following individuals:

- (a) Tribal Prosecutor
- (b) Protective Services Workers
- (c) Police Investigators
- (d) Medical Professionals
- (e) Mental Health Professionals
- (f) School Personnel
- (g) Victim Advocate
- (h) Tribal Court Probation Staff

30.1213 Purpose of the Child Protection Team.

The primary purpose of the Child Protection Team is technical and advisory in nature and is not intended to replace the authority and responsibility of the Child Welfare Committee, individual agencies or the Tribal Court. It is designated to promote cooperation, communication and consistency among agencies. The Child Protection Team shall facilitate the decision making process. Confidentiality shall be maintained by all Child Protection Team Members.

30.1214 Duties of the Child Protection Team.

- (1) The Child Protection Team may be assigned the following duties:
 - (a) Maintain confidentiality of information.
 - (b) Send local Child Protection Team data to area child protection teams as needed.
 - (c) Providing recommendations to various pertinent agencies concerning services needed by families or individuals.

(2) Facilitating Services: The Child Protection Team may also provide assistance by facilitating the provision of services to families by:

- (a) Identifying available community resources, programs and services.
- (b) Providing a forum for debating what actions would best promote the well-being of Indian children.
- (c) Responding to inquiries from the community, area child protection teams and other individuals and groups.

(3) Technical Assistance: The Child Protection Team may also provide technical assistance to the Child Welfare Committee and Family Services Department in the following areas:

- (a) Development of procedures to provide effective and efficient preventative, protective and corrective child abuse and neglect services.
- (b) Information and technical recommendations to decision making agencies.
- (c) Educate communities about child abuse and neglect problems and possible solutions.
- (d) Identify danger signs, which prompt intervention and/or preventative actions.
- (e) Assist in the development and implementation of plans to promote the long term well-being of child and their families.
- (f) Assist in the development and implementation of strategies by communities to promote the dignity, self-worth, self-respect and self-sufficiency of community members.

30.1215 Multidisciplinary Team.

The Multidisciplinary Team shall, at a minimum, include:

- (a) Tribal Prosecutor
- (b) Protective Services Workers
- (c) Appropriate Law Enforcement Personnel
- (d) Victim Services Personnel.

30.1216 Purpose of the Multidisciplinary Team.

The Multidisciplinary Team serves in cases involving allegations of physical and sexual abuse of Indian children on Tribal Lands.

30.1217 Duties of the Multidisciplinary Team.

(1) The Multidisciplinary Team shall be responsible for coordinating the investigation and prosecution of cases involving allegations of physical and sexual abuse of Native American children on Tribal Lands of the Sault Ste. Marie Tribe of Chippewa Indians. A key responsibility of the Multidisciplinary Team is to reduce the trauma to the child victim by coordinating the provision of support, advocacy and other services needed by the child victim.

(2) Adoption of Tribal Specific Protocols: The Tribal Prosecutor, Child Welfare Committee, and Tribal Court Personnel shall consult with other appropriate Tribal, State, local and federal agencies to develop Tribal Specific Protocols for adoption by the Sault Ste. Marie Tribe of Chippewa Indians.

30.1218 Court Appointed Special Advocate.

(1) Appointment: At every stage of the proceedings conducted pursuant to this Chapter, the Tribal Court may appoint an advocate for the child who may be a lawyer or a Court Appointed Special Advocate (CASA).

(2) Qualification: A person may serve as a CASA only if certified by the Court Appointed Special Advocate Committee based upon criteria determined by the CASA Committee.

(3) Duties: The child's advocate shall perform the following duties:

(a) Represent the best interests of the child.

(b) Appear at all hearings to represent competently the interests of the child in proceedings before the Tribal Court.

(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 a written report of findings and recommendations to the Tribal Court at each hearing held before the Tribal Court.

(e) Urge that specific and clear orders are entered for evaluation, assessment, services and treatment for the child and his family.

(f) Inform the Tribal Court if the services are not being made available to the child

and/or family, if the family fails to take advantage of such service.

(g) Identify the common interests among the parties and, to the extent possible, act as mediator to promote a cooperative resolution of the matter.

(h) Consult with other professionals liberally in identifying the child's interests, current and future placements, and necessary services.

(i) Advocate for the interests of the child in mental health, educational, juvenile justice, and other community systems when related to the circumstances causing the child to come within the child-in-need-of-care jurisdiction of the Tribal Court.

(j) Attend training programs as prescribed by the CASA Committee.

30.1219 Caseworkers.

Caseworkers employed by the Tribe, or authorized by agreement with the Tribe by resolution of the Board of Directors, shall have the powers and duties contained in this section or set forth elsewhere in this Chapter. These powers include the following:

(1) Receive from any source, oral or written, information regarding a child who may be a child-in-need-of-care.

(2) Upon receipt of any report or information under §30.405 within 24 hours initiate a prompt and thorough investigation which shall include a determination of the nature, extent, and cause of any condition which is contrary to the child's best interests and the name, age and condition of other children in the home.

(3) In conducting its investigation, the caseworker shall seek the assistance of and cooperate with law enforcement officials within 24 hours after becoming aware that one or more of the following conditions exist:

(a) Abuse or neglect is the suspected cause of a child's death.

(b) The child is the victim of suspected sexual abuse or sexual exploitation.

(c) Abuse or neglect resulting in severe physical injury to the child requires medical treatment or hospitalization. For purposes of this Chapter, "severe physical injury" means brain damage, skull or bone fracture, subdural hematoma, dislocation, sprains, internal injuries, poisoning, burns, scalds, severe cuts, or any other physical injury that seriously impairs the health or physical well-being of a child.

(d) Law enforcement intervention is necessary for the protection of the child, the caseworker or another person involved in the investigation.

(e) The alleged perpetrator of the child's injury is not a person responsible for the child's health or welfare.

(4) Take a child into temporary custody if necessary pursuant to §30.402. Law enforcement officials shall cooperate with social service personnel to remove a child from the custody of his parents, guardian or custodian when necessary.

(5) Evaluate and assess the home environment of the child or children in the same home and the risk to such children if they continue to be subjected to the existing home environment, and all other facts or matters found to be pertinent.

(6) Substantiate whether there is a probable cause to believe that the child is a child-in-need-of-care.

(7) Offer to the family of any child found to be a child-in-need-of-care appropriate services which may include, but shall not be restricted to, protective services.

(8) Within 30 days after a referral of a potential child-in-need-of-care, submit a written report of his investigation and evaluation which shall be included in the files maintained by the

Anishnabek Community and Family Services Department and shall include a determination as to whether the report was substantiated or unsubstantiated.

(9) Upon completion of the investigation by the local law enforcement agency or the caseworker, the law enforcement agency or caseworker may inform the person who made the reports to the disposition of the report.

(10) Upon receipt of a report which alleges a pregnant woman's abuse of alcohol or a controlled substance, caseworker shall arrange an appropriate assessment and offer services indicated under the circumstances. Services offered may include, but are not limited to, a referral for chemical dependency assessment, a referral for chemical dependency treatment if recommended, and a referral for prenatal care. A caseworker may also seek Tribal Court ordered services under this Chapter.

SUBCHAPTER XIII: FOSTER HOME STANDARDS

30.1301 Foster Home Certification.

The Division Director of the Anishnabek Community and Family Services is authorized to license foster homes and group homes for the care of children as provided in this Subchapter.

30.1302 Foster Home Standards.

(1) A home may be licensed as a foster home under this section if it is:

(a) located on the Tribe's reservation or trust lands; or

(b) an extended family placement for the child to be placed in it. An extended family placement is a placement with an adult related to the child as a grandparent, aunt or uncle, brother or sister, brother in law or sister in law, niece or nephew, first or second cousin or stepparent; or

(c) a home located off the Tribe's reservation or trust lands.

(2) The following standards shall be applicable to the foster home:

(a) The home shall be so constructed, arranged and maintained so as to provide adequately for the health and safety of occupants.

(b) Water supply systems must meet the requirements for safe drinking water. Sewage disposal systems shall be environmentally safe. An inspection by Tribal environmental health personnel may be required.

(3) The following standards shall be applicable to the foster family:

(a) All members of the household must be in such physical and mental health as will not affect adversely either the health of the child or the quality and manner of his care.

(a) Members of the foster family shall be of good character, habits and reputation; relationships within the family shall be such that a wholesome atmosphere for the child will be assured. All members of the foster family shall be willing to accept the foster child into the home as a member of the family group.

(c) The persons in charge of the foster home shall be of suitable temperament to care for children; shall understand the needs of children; shall be capable of handling an emergency situation promptly and intelligently; and shall be willing to cooperate fully with the children's own parents and/or the supervising agency.

(b) Infants and young children shall never be left alone without competent supervision. Older foster children may be left based upon their individual maturity and development skills.

(4) Waiver of Standards. The Division Director of Anishnabek Community and Family Services may waive a Foster Home Standard under this Subchapter.

SUBCHAPTER XIV: GROUP HOME STANDARDS

30.1401 Group Home Certification.

The Division Director of Anishnabek Community and Family Services is authorized is authorized to license group homes for the care of children as provided in this Subchapter.

30.1402 Group Home Standards.

- (1) A home may be licensed as a group home if it is located on the Tribal lands of the Sault Ste. Marie Tribe of Chippewa Indians.
- (2) Employee records shall be maintained for each employee and shall include all of the following:
 - (a) Name.
 - (a) Verification of education where minimum education requirements are specified by rule.
 - (c) Work History.
 - (d) Three references.
 - (c) A record of any convictions other than minor traffic violations. Where such references are not available or practical to obtain prior to the employment date, the employee shall provide a certification as to the existence of any record of convictions; provided, such request for record clearances is made prior to the date of employment.
 - (d) Written evaluations of the employees shall be performed on a regular basis. The first evaluation shall be performed at the end of the probationary period. Subsequent evaluations shall be performed on a periodic basis but not less than annually.
- (3) The licensee shall have a sufficient number of administrative, supervisory, social service, direct care and other staff to perform the prescribed functions required by this Subchapter and to provide for the needs, protection and supervision of residents.
- (4) The ratio formula for direct care workers shall correspond with the institution's purpose and the needs of the residents and shall assure the continual safety, protection and direct care and supervision of residents.
- (5) The licensee shall develop and adhere to a written staff-to-resident ratio for direct care workers.

(6) The licensee shall document that each employee and volunteer who has contact with residents four or more hours per week for more than two consecutive weeks is free from communicable tuberculosis

(7) A person with ongoing duties shall be of good moral character, emotionally stable, and of sufficient health, ability, experience and education to perform the duties assigned.

(a) The person shall provide certification as to the existence of a criminal record which shall indicate specific convictions. This record shall be indicative of a person of good moral character.

(b) The person shall provide certification that they have not been found in substantiation of child abuse or neglect.

(c) Subs. (i) and (ii) shall be confirmed through independent verification.

(8) The licensee shall provide an orientation program for new employees. The orientation shall include the following:

(a) The institution's purpose, policies, and procedures, including discipline, crisis intervention techniques, and emergency and safety procedures.

(b) The role of the staff members as related to service delivery and protection of the child.

(9) The following environmental safety standards shall apply to group homes:

(a) Group Homes shall be inspected for health and safety issues at least once per calendar year by a qualified agent independent of Group Home staff.

(10) An institution shall provide sufficient resident living space, office space and equipment to assure delivery of licensed services.

(a) Sleeping rooms shall provide adequate space for each resident.

(11) An institution shall establish and follow written procedures for potential emergencies and disasters, including fire, severe weather, and medical emergencies and missing persons.

(12) An institution shall assure resident and parent privacy and confidentiality and shall protect residents from exploitation.

(13) An institution shall establish and follow written policies and procedures regarding discipline and behavior management. Upon request, these shall be available to all residents, their families and referring agencies. Staff shall receive a copy of these policies and procedures and shall comply with them.

(14) An institution shall establish and follow written health service policies and procedures addressing all of the following:

- (a) Routine and emergency medical and dental care.
- (b) Health screening procedures.
- (c) Maintenance of health records.
- (d) Storage of medicines.
- (e) Dispensing medication.
- (f) Personnel authorized to dispense medications.

(15) Any serious injury or illness requiring hospitalization of a resident shall be reported to the parent and responsible referring agency as soon as possible, but not more than 24 hours later. This rule does not apply to emergency room treatment where the illness or injury is threatened the resident is not hospitalized. In such cases, the parent shall be notified, but not necessarily within 24 hours.

(16) The death of a resident shall be reported immediately to the parents or next of kin, the Division Director of Anishnabek Community and Family Services, and referring agency.

(17) The following treatment planning standards shall apply to group homes:

(a) A child shall be admitted only after establishing that the institution is an appropriate placement to meet the child's needs.

(b) Upon admission, all of the following shall be in the resident's case record:

(i) Name, address, birth date, sex, race, height, weight, hair color, eye color, identifying marks, religious preference and school status.

(ii) A brief description of the resident's preparation for placement and general physical and emotion state at time of admission.

(iii) Name, address, and marital status of parents and name and address of

legal guardian, if known.

(iv) Date of admission and legal status.

(v) Documentation of legal right to provide care.

(vi) Authorization to provide medical, dental, and surgical care and treatment.

(vii) A brief description of the circumstances leading to the need for care.

(c) A case record shall be maintained on each resident.

(d) Medical treatment and health services shall be provided as follows:

(i) Medical treatment shall be under the supervision of a licensed physician.

(ii) An institution shall provide and document periodic physical examination for each resident as follows, unless greater frequency is medically indicated:

(iii) Sufficient health history information shall be documented for each resident to assure proper medical care.

(iv) A resident shall have current immunizations as required by the Department of Public Health and/or the Michigan Department of Education.

(v) A licensee shall arrange for the provision of and shall document dental examination and treatment of each resident. A dental examination within 12 months prior to admission shall be documented or there shall be an examination not later than three months following admission. Reexamination shall be provided at least annually.

(18) An initial service plan shall be completed.

(19) An updated service plan shall be completed and recorded for each resident.

(20) When a resident is discharged from institutional care a Group Home Care Termination Summary will be completed.

30.1403 Waiver of Standards.

The Division Director of the Anishnabek Community and Family Services may waive a standard under this Subchapter.

SUBCHAPTER XV: CHILD CARE LICENSING

30.1501 Center Licensing.

The Division Director of Anishnabek Community and Family Services is authorized to license Family and Group Child Care providers as provided in this Subchapter.

30.1502 Center Staff.

A center must keep on file verification of the educational qualifications and current job descriptions for all center staff.

30.1503 Center Staff Qualifications.

All center staff must complete a background criminal history check per Sault Ste. Marie Tribe of Chippewa Indians Background Check Policy.

30.1504 Number of Staff.

(1) A center must provide appropriate care and supervision of children at all times by meeting or exceeding the standards in this Subchapter.

(2) The ratio of center staff to children present at one time in the center and during outdoor activities must be based upon the following provisions:

(a) For children one month to one year of age, there must be one (1) center staff per four (4) children.

(b) For children one to three years of age, there must be one (1) center staff per four (4) children.

(c) For children three to six years of age, there must be one (1) center staff per seven (7) children.

(d) For children seven years to twelve years, there must be one (1) center staff per ten (10) children.

30.1505 Program Requirements.

(1) A center must provide a program of daily activities and relationships that promote opportunities for emotional, social, educational and cultural developmental growth of each child.

(2) A center must permit parents to visit the program anytime during operating hours.

(3) A center must provide each child in attendance for five (5) or more hours a day an opportunity to rest.

(4) A child must not be in care for more than ten (10) hours a day.

30.1506 Discipline.

(1) Center staff must use positive methods of discipline which encourage self-control, self-direction, self-esteem and cooperation.

(2) Staff must be prohibited from using the following as a means of punishment:

(a) Hitting, spanking, shaking, biting, pinching or inflicting any form of corporal punishment.

(b) Restricting a child's movement by binding or tying him or her.

(c) Inflicting mental or emotional punishment, such as humiliating, shaming or threatening a child.

(d) Depriving a child of meals, snacks, rest or necessary toilet use.

(e) Confining a child in an enclosed area, such as a closet, locked room, box or similar cubicle.

(3) Non severe discipline or restraint may be used when necessary, based on a child's development, to prevent a child from harming himself or herself or to prevent a child from harming other persons or property, excluding those forms of punishment prohibited by subrule (2) of this rule.

(4) A center must have written policy regarding the discipline of children. This policy must be furnished to parents and staff.

30.1507 Equipment Requirements.

(1) A center must provide an adequate and varied supply of age appropriate play equipment, materials and furniture that are safe, clean and in good repair.

(2) A center must provide each child enrolled five (5) or more hours a day with an age appropriate cot or crib to rest each day.

(3) A center must allow floor space for the safe positioning of cots or cribs.

- (4) Equipment and materials must provide for:
- (a) Large and small muscle activity.
 - (b) Sensory exploration.
 - (c) Social interaction and dramatic play.
 - (d) Discovery and exploration, including structuring and restructuring.
 - (e) Creative experiences through cultural art, music and literature.

30.1508 Food Service and Nutrition.

A center will follow recommendations of the Michigan Child and Adult Food Program.

30.1509 Child Information Records.

(1) A center must keep accurate updated child information forms on each child enrolled in the center.

(9) A center must report an accident or illness, occurring while a child is in care, which results in hospitalization or death. This report must be submitted to the Division Director of Anishnabek Community and Family Services within twenty-four (24) hours.

(3) A center must have an updated immunization record on file or a waiver signed by the parent(s) denying or refusing due to medical or religious beliefs.

(4) A center must obtain and keep on file a signed statement of the child's health based on an evaluation by a licensed physician or his or her designee and every two (2) years thereafter. Restrictions, if any, on activities shall be stated by a licensed physician or his or her designee.

30.1510 Health of Personnel Requirements.

(1) A center shall have on file a "Medical Clearance Form" completed by a licensed physician or his or her designee for each staff member every two years.

(2) A center must have on file evidence that each staff or student is free from communicable tuberculosis and verified every year thereafter.

30.1511 Administration of Medications.

(1) When a center administers medication, the following provisions must apply:

(a) Medication must be given or applied only with prior written permission from the parent. Prescription medication must have the pharmacy label indicating the physician's name, child's name, instructions, and name and strength of the medication and must be given in accordance with those instructions.

(b) Center staff must maintain a record as to the time and the amount of any medication given or applied.

(c) The medication must be in the original container, stored according to the instructions and clearly labeled for the specific child. Staff must keep the medication out of the reach of children, and must return the medication to the parent or destroy when no longer needed.

(d) All staff must comply with the above regulations.

(2) Health surveillance measures include the following:

(a) A center is responsible for reporting to the parent observed changes in the child's health or any accidents that may have happened to the child.

(b) A child too ill to remain in care must be placed in a separate area where he or she may be cared for and supervised until her or she can be taken home.

(b) A child that has contracted a communicable disease must not return to care until the child is no longer contagious as recommended by the Center For Disease Control.

30.1512 Admission and Withdrawal Criteria; Schedule or Operation; Fee Policy.

A center must provide each parent with a Parent Handbook, which includes all of the above mentioned information.

30.1513 Telephone Service.

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

30.1514 Indoor Activity Space.

(1) For each child birth to two (2) years of age, a center must have a minimum of fifty (5) square feet of indoor activity space for use by and accessible to the child.

(2) For each child two (2) to twelve (12) years of age, a center must provide thirty-five (35)

square feet of activity space for use by, and accessible to, the child.

- (2) The following is excluded from child activity space.
 - (a) Hallways.
 - (b) Bathrooms.
 - (c) Reception and office areas.
 - (d) Kitchens.
 - (e) Storage areas and cloakrooms.
 - (f) Areas used exclusively for resting, sleeping or eating.

30.1515 Outdoor Play Area.

- (1) A center operating five or more continuous hours a day must have safe fenced outdoor play area not less than fifty (50) square feet per child.
- (2) Age appropriate play equipment must be provided.

30.1516 Sleeping Equipment; Seating for Staff.

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

30.1517 Health and Safety Provisions.

- (1) A center will be inspected for health and safety issues once per calendar year. The inspection will be completed by the Sault Ste. Marie Tribe of Chippewa Indians (Sault Tribe) Safety Department.
- (2) Findings and recommendations will be implemented by the center.
- (3) A center will be inspected for environmental health provisions by the Sault Tribe Environmental Health Inspector once a year.

SUBCHAPTER XVI: TRIBAL CUSTOMARY ADOPTION

30.1601 Purpose.

(1) The tribal customary adoption code shall be liberally interpreted and construed as an exercise of the inherent sovereignty of the Sault Ste. Marie Tribe of Chippewa Indians to fulfill the following express purposes:

- (a) To promote the traditional values and practices of the Sault Ste. Marie Tribe of Chippewa Indians regarding the protection and care of the Tribe's children. The Sault Ste. Marie Tribe of Chippewa Indians believes that it is the responsibility of the Tribe, the tribal community, and extended family to protect, care for, and nurture our children.
- (b) To exercise the belief of the Sault Ste. Marie Tribe of Chippewa Indians that children are entitled to a sense of permanency and belonging throughout their lives.
- (c) To ensure that children receive the opportunity to cultivate their own cultural identities through knowledge of tribal customs, history, language, religion, and values.
- (d) To establish procedures by which the Tribal Court will adjudicate the rights, responsibilities, care, custody, and control of minor children when the biological parents are unable or unwilling to provide a safe, stable, nurturing, and permanent environment for their children.
- (e) To further the policy of the Tribal Board of Directors promoting the adoption of Indian children in accordance with the placement preferences outlined in 30.602.

30.1602 Who May be Adopted.

Any child who is a member of the Tribe or eligible for membership and who comes within the jurisdiction of the Tribal Court.

30.1603 Who May Adopt.

- (1) Subject to the approval of a licensed child placement agency and the Child Welfare Committee, any of the following persons are eligible to adopt a child:
 - (a) Any adult member of the Tribe is eligible to adopt a child.
 - (b) A legally married couple may jointly adopt children but a person may not adopt a

child without approval of the adopting person's spouse.

(c) In extraordinary circumstances as determined by the Tribal Court, when the best interests of the Tribe and/or the child require, non-members shall be eligible to adopt children.

30.1604 Petition for Tribal Customary Adoption.

(1) The agency with custody of a minor child may file a petition with the Tribal Court clerk seeking an order for the Tribal Customary Adoption of an Indian child. The petitioner shall sign the petition in the presence of the Tribal Court clerk and shall affirm under oath that the contents are true and correct except as to those matters based upon belief, and, as to those matters, the petitioner reasonably believes them to be true. The petition shall contain the following information:

(a) The full names, ages, place of residence, and marital status of the petitioner and the relationship, if any, to the child to be adopted.

(b) The Indian tribal membership status of the child and of the petitioner.

(c) The date, if applicable, when the child first was placed or lived with the petitioner.

(d) The date and place of birth of the child.

(e) The adoptive name of the child if a change of name is desired.

(f) That it is the desire of the petitioner, approved by their spouse, if any, to adopt the child.

(g) A statement or a copy of the Final Order Permanently Suspending Parental Rights.

(h) A statement as to why a final order for tribal customary adoption is in the best interests of the child and the best interests of the child's tribe.

(i) A statement as to basis for the tribal customary adoption supported by a home study, medical, psychiatric, child protection worker, family member and/or

psychological reports or testimony.

(j) A statement that no similar action is pending in a tribal or state court having jurisdiction over the child.

(k) A full description and statement of the value of all property owned or possessed by the child, if known by the petitioner.

(l) Full disclosure of any fees or anything of value given or paid in connection with the adoption of the child.

(2) Any written consent required by this Chapter may be attached to the petition or may be filed with the Tribal Court at or prior to the hearing.

30.1605 **Consent.**

(1) No tribal customary adoption shall be granted unless consent to the permanent suspension of parental rights for the purposes of tribal customary adoption has been obtained and filed with the Tribal Court from the following:

(a) From both biological parents, if living;

(i) Consent is not necessary from a parent who has been declared incompetent by a court of competent jurisdiction, and it appears to the Tribal Court on reliable medical evidence that the incompetence is in all likelihood permanent.

(ii) Consent is not necessary from a parent whose parental rights have been terminated by a court of competent jurisdiction.

(iii) Consent of a father of a child born out of wedlock is governed by §30.420.

(b) From an agency which has been given consent to place the child for adoption by the parent or parents whose relinquishment would be necessary under sub. (a), or which has been authorized in other legal proceedings to place the child for adoption.

(2) If the child is twelve (12) years of age or older, the child shall not be adopted without the child's consent. Such consent shall be given in Tribal Court or in such other form as the Tribal Court may direct.

30.1606 Final Order Permanently Suspending Parental Rights.

(1) Upon receiving the consent to the permanent suspension of parental rights for the purpose of tribal customary adoption and determining that the permanent suspension of parental rights is in the best interest of the Indian child and the Tribe, the Court shall issue a Final Order Permanently Suspending Parental Rights. Copies of the Order shall be served upon the parent(s) and/or agency having legal custody of the child and any other parties as directed by the Court. Such an order may include, but is not limited to, the following:

(a) Permanent suspension of parental rights of the parent, including the right to the care, custody, and control of the child;

(b) Permanent suspension of the right of the parent to have contact with the child in person, by mail, by telephone, and/or through third parties;

(c) Restriction on the parent's contact with the child, the child's foster parent, the child's adoptive parent and/or the social services agency or agencies possessing information about the minor child;

(d) Termination of any prior court order for custody, visitation, or contact with the minor child;

(e) A determination that suspension of parental rights does not sever or affect the child's relationship to the Tribe or any rights of inheritance from the biological parents; and/or

(f) A statement regarding why it is in the best interest of the minor child and the Tribe to enter this order.

30.1607 Investigation and Reports.

Upon the filing of a petition for tribal customary adoption, the Tribal Court may request the caseworker handling the tribal customary adoption to inquire into, investigate, and report to the Tribal Court and the Child Welfare Committee the eligibility of the adoptee for tribal customary adoption, the financial ability, moral and physical fitness, and general background of the adopting parent (s); and make recommendations on the proposed tribal customary adoption. 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 tribal customary adoption.

30.1608 Recommendation of the Child Welfare Committee.

Upon completion of the investigative report, the Tribe's caseworker shall submit his/her report to the Child Welfare Committee and the committee will formulate a recommendation for the Tribal Court.

30.1609 Hearing on Tribal Customary Adoption Petition.

- (1) Tribal Court Initial Hearing: Within ten (10) days of the receipt of the petition

for tribal customary adoption the Tribal Court shall schedule a hearing on the petition.

- (2) Notice.

- (a) The adoptee, adopting parent (s), and all other interested parties shall

be given notice of the hearing.

- (3) The adoptee, adopting parent(s), and attorney guardian ad litem shall appear in person at the initial hearing.

- (4) 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 Child Welfare Committee recommends tribal customary adoption at the initial hearing, the Tribal Court, upon a motion by the petitioner, may waive the trial custody period and the final tribal custody adoption decree may be entered at the initial hearing.

- (5) Final Hearing if Trial Custody Period Not Waived: Not less than ninety (90) days, nor more than one hundred twenty (120) days, after the adoptee has been in the custody of the adoptive parent (s), the adoptive parent (s) shall appear before the Tribal Court. The Tribal Court shall hear testimony about the welfare of the adoptee and the current status of the adoptive home, and the desire of the adoptive parent (s) to finalize the tribal customary adoption.

30.1610 Final Order of Tribal Customary Adoption

(1) If the Tribal Court is satisfied that the interests of the adoptee are best served by the proposed tribal customary adoption, the final tribal customary adoption decree may be entered. The Tribal Court may order, or adoptive parent (s) may request, a six (6) month extension of the trial custody period, after which a final tribal customary adoption decree must be entered or the petition for tribal customary adoption must be dismissed.

- (2) If the court determines that it is in the best interests of the child and the child's tribe, it shall issue a final order for a tribal customary adoption. Such an order may

include, but is not limited, to the following:

- (a) A statement that the child has been adopted by the adoptive parents and that the parent-child bond is hereby established and that all of the rights and responsibilities of that relationship shall exist upon the entry of such a final order;
- (b) A notice regarding the new name of the child, if any.

30.1611 Effect of the Final Order of Tribal Customary Adoption.

- (1) Tribal Status Not Effected: The status as a member of the Tribe shall not be affected by adoption. An adoptee who is eligible for membership in the Sault Ste. Marie Tribe of Chippewa Indians shall be enrolled as a tribal member prior to the finalization of the adoption.
- (2) Biological Parents Relieved of Parental Responsibilities: After the final decree of adoption is entered, the biological parents, except a biological parent who is the spouse of an adoptive parent, shall be relieved of all parental responsibilities for such adoptee and have no right regarding the adoptee or right to inherit his/her property by descent or distribution.
- (3) 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 Tribal Court orders otherwise.
- (4) Adoptees shall be entitled to the same rights of person and property as children or heirs of the adoptive parents. However, if an inheriting adoptee is not a member of, or eligible for membership in the Sault Ste. Marie Tribe of Chippewa Indians, then said child may not be eligible to inherit any interest which the deceased member's estate may have to any Tribal privilege, right, land or property of any kind.
- (5) Adoptees shall be entitled to the society and companionship of their biological siblings.

30.1612 Withdrawal or Denial of Petition; Custody.

Consent to tribal customary adoption may be withdrawn by a parent (s) whose parental rights have not been terminated, at any time before the entry of the final order of tribal customary adoption.

30.1613 Confidentiality of Proceedings and Record.

Unless the Tribal Court otherwise orders, hearings held in proceedings under this Section

shall be confidential and shall be held in closed session, without admission of any persons other than the interested parties and witnesses. All papers, records, petitions, or files pertaining to proceedings, except the final order of tribal customary adoption, shall be maintained by the Tribal Court in locked files and shall not be released to anyone, except pursuant to Tribal Court order or consent of the adoptee executed after the adoptee attains the age of eighteen (18).

30.1614 Dismissal After Death; Exception.

In the event of the death of the adoptive parent prior to tribal customary adoption, the petition shall be dismissed, except if there are two adoptive parents, the proceeding shall continue as the petition of the surviving adoptive parent unless withdrawn by the survivor.

30.1615 Irregularities; Curative Period.

After one year from the date a tribal customary adoption decree is entered, any irregularity in the proceeding shall be deemed cured and the validity of the decree shall not thereafter be subject to attack on any such ground in any collateral or direct proceeding.