

# Chapter VII

## JUVENILE CODE

701. JUVENILE CODE - While proceeding under this Chapter, the Tribal Court shall be termed the Juvenile Division of the Tribal Court.

Proceedings under this Chapter shall not be deemed to be criminal proceedings.

702. PURPOSE AND CONSTRUCTION - This Chapter shall be liberally interpreted and construed to fulfill the following purposes:

- A. To provide for the welfare, care and protection of the children and families within the jurisdiction of the Bay Mills Indian Community;
- B. To preserve unity of the family, preferably by separating the child from his parents only when necessary;
- C. To take such actions that will best serve the spiritual, emotional, mental, and physical welfare of the child and the best interest of the tribe to prevent the abuse, neglect and abandonment of children;
- D. 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;
- E. To secure the rights of and ensure fairness to the children, parents, guardians, custodians and other parties who come before the court under the provisions of this Chapter;
- F. To provide procedures for intervention in state court proceedings regarding Indian children and for transfer of jurisdiction over Indian children from state and other Tribal Courts to this Tribal Court;
- G. To recognize and acknowledge the tribal customs and traditions of the Bay Mills Indian Community regarding childrearing; and

H. To preserve and strengthen the child’s cultural and ethnic identity whenever possible.

703. **DEFINITIONS** - The following terms shall have the meanings described below for the purposes of this Chapter:

- A. “Adult” - A person eighteen (18) years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.
- B. “Case Management Team” - A team established to involve and coordinate the child protection services of various agencies as set forth in Section 710 of this Code.
- C. “Child” - An unmarried person who is less than eighteen (18) years old and has not been emancipated by order of a court of competent jurisdiction.
- D. “Child Born out of Wedlock” - A child conceived and born to a woman who is unmarried from the conception to the birth of the 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.
- E. “Child in Need of Care” - A child:
  - 1. Who has no parent(s), guardian, or custodian available and willing to care for him/her;
  - 2. Who has suffered or is likely to suffer a physical injury, inflicted upon him by other than accidental means, which causes or creates a substantial risk of death, disfigurement, or impairment of bodily function;
  - 3. Whose parent(s), guardian, or custodian has not, for reasons other than poverty, provided adequate food, clothing, shelter, medical care, education, or supervision necessary for his health and wellbeing;
  - 4. Who has been sexually abused or exploited by parent(s), guardian or custodian, either intentionally or negligently;

5. Who has committed delinquent acts as a result of parental pressure, guidance, approval or failure to properly supervise;
  6. Who has been emotionally abused or emotionally neglected; or
  7. Who is born addicted to alcohol or exposed to a controlled substance, which has resulted in physical and/or mental harm to the child.
- F. “Child Offender” – A child who:
1. Is under the age of 18 and has committed an act which is designated as a crime if committed by an adult under the laws of the Bay Mills Indian Community or under the laws of the United States applicable to the Reservation of the Bay Mills Indian Community;
  2. Is under the age of 18 and has violated any tribal ordinance within the exterior boundaries of the Bay Mills Indian Community;
  3. Willfully and repeatedly absents him/herself from school, or repeatedly violates rules and regulations of the school;
  4. Is unamenable to parental control;
  5. Is a runaway; or
  6. So deports him/herself as to injure or endanger the health or wellbeing of him/herself or others.
- G. “Child Welfare Committee” – A committee appointed by the Executive Council to protect the best interests of the children of the tribe and promote the stability and security of the tribe as set forth in Section 708 of this Code.
- H. “Controlled Substance” – Marijuana, cocaine, amphetamines, opiates, phencyclidine, barbiturates, and any derivative of any of the above substances.

- I. **“Court”** – The Juvenile Division of the Bay Mills Indian Community Tribal Court.
- J. **“Court Appointed Special Advocate” (CASA)** – A person appointed by the court to represent the interests of a child who is before the court.
- K. **“Custodian”** – A person, other than a parent or guardian, to whom legal custody of the child has been given.
- L. **“Domicile”** – 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.
- M. **“Extended Family”** – A person who is the child’s grandparent, great-aunt or uncle, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or step-parent.
- N. **“Father”** means:
  - 1. A man 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. A man who legally adopts the child, or
  - 3. A man whose paternity is established in one of the following ways within time limits, when applicable, set by the 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 or probate court;
    - 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;

- c. The man acknowledges the child, without the acknowledgement of the mother, with the approval of the court; or
  - d. A man who by order of filiations or by judgment of paternity is determined to be the father of the child.
- O. “Guardian” – A person assigned by a court of law, other than a parent, having the duty and authority to provide care and control of a child as set forth in Section 729 of this Chapter or Chapter XIII of the Tribal Code.
- P. “He/His” – The use of he/his means he or she, his or her, and singular includes plural.
- Q. “Indian” – Any member of a federally recognized Indian tribe, band or community, or Alaska Natives and any person so defined by federal or state law.
- R. “Indian Child” – A child who is a member of a tribe or eligible for membership in a tribe.
- S. “Least Restrictive Alternative” – 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 Court and this Chapter.
- T. “Parent” – 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, nor does it include the unwed father whose paternity has not been acknowledged or established.
- U. “Probation Officer” – Staff persons of that office of Tribal Social Services who monitor and supervise the restrictions related to probationary status imposed by the Tribal Court.
- V. “Protective Services Worker” – The protective service worker, social services worker, law enforcement personnel or any person who performs the duties and responsibilities set forth in Section 709 of this Chapter.

- W. “Tribe” – The Bay Mills Indian Community.
- X. “Tribal Council” – The Executive Council of the Bay Mills Indian Community.
- Y. “Tribal Court” – The Tribal Court of the Bay Mills Indian Community.
- Z. “Tribal Social Services” – The Department of the Tribe which provides social and human services to the residents and guests of the Bay Mills Indian Community.

**704. JURISDICTION OF THE JUVENILE DIVISION – Except as provided herein, the Juvenile Division of the Tribal Court shall have:**

- A. Exclusive original jurisdiction, regardless of any other court proceedings concerning any Bay Mills Indian Community child who:
  - 1. Commits an act as a child offender within the exterior boundaries of the reservation of the Bay Mills Indian Community; or
  - 2. Is subject to the adoption provisions of Chapter XI of the Tribal Code.
- B. Jurisdiction over any child alleged to be in need of care who is found or resides within the exterior boundaries of the reservation of the Bay Mills Indian Community.
- C. Jurisdiction over the child’s extended family residing in the household, whenever the court deems it appropriate and necessary to carry out its responsibility to protect the child and prevent family dysfunction. Jurisdiction requires that such person be provided notice and opportunity for hearing.
- D. Upon relevant amendment to the Constitution of the Bay Mills Indian Community, jurisdiction may be exercised over any Indian child who if found or resides within the exterior boundaries of the Bay Mills Indian Community and who is alleged to be a child offender.

- E. Jurisdiction over any adult whose behavior causes or tends to cause the child to come within or remain within the Jurisdiction of the Court.
- F. Jurisdiction over any proceeding which is transferred to the Juvenile Division by a state or Tribal Court.
- G. Once the Court asserts jurisdiction over a person under this Section, the Court may retain jurisdiction over that person even if he leaves the physical boundaries of the reservation.
- H. Once the Court asserts jurisdiction over a child under this Section, jurisdiction shall be retained until the child attains the age of 18 years or graduates from high school, whichever shall later occur.

#### **705. TRANSFER OF JURISDICTION**

- A. Application of the Indian Child Welfare Act - The Juvenile Division may apply the policies of the Indian Child Welfare Act, 25 U.S.C. 1901-1963, where they do not conflict with the provisions of this Chapter. The procedures for state courts in the Indian Child Welfare Act shall not be binding upon the Juvenile Division except where specifically provided for in this Chapter.
- B. Transfer to State Court or other Tribal Court - In any proceeding before the Juvenile Division, the 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.
- C. Transfer from other Courts. The Juvenile Division may accept or decline, under the procedures set forth in this Chapter, transfers of child welfare cases from other federal, state or Tribal Courts.
- D. Procedures for Transfer from State Court
  - 1. Receipt of Notice - The tribal agent for service of notice of state court child custody proceedings, as required by the Indian Child Welfare Act, shall be the Tribal Social Services Department.

2. **Intervention** – The Tribal Social Services Department, through the office of Tribal Attorney, shall cause a motion to intervene to be filed with the state court within five days of receipt of notice.
  3. **Investigation and Pre-Transfer Report** – The Tribal Social Services Department shall conduct an investigation and file a written report with the Child Welfare Committee.
  4. **Decision to Transfer** – The Child Welfare Committee shall determine whether or not the tribe should petition for transfer from the state court. The Child Welfare Committee shall consider these factors:
    - a. The best interests of the child,
    - b. The best interests of the tribe,
    - c. Availability of services for the child and his family, and
    - d. The prospects for permanent placement for the child.
  5. **Petition for Transfer** – The tribal petition for transfer shall be filed by the tribal attorney within five (5) days of receipt of the determination from the Child Welfare Committee with a copy sent to the Tribal Court. If there is no tribal attorney, the Child Welfare Committee shall file the Petition for Transfer.
  6. **Acceptance of Transfer** – The Juvenile Division has discretion whether to accept or deny transfer.
  7. **Hearing(s)** – Upon receipt of transfer jurisdiction from state court, the Tribal Court shall hold appropriate hearings in accordance with this Chapter.
- E. Full, Faith and Credit; Conflict of Laws.**
1. **State Court Orders** – State child custody orders involving children over whom the Juvenile Division



could take jurisdiction may be recognized by the Juvenile Division only after a full independent review of such state proceedings has determined:

- a. The state court had jurisdiction over the child; and
  - b. The provisions of the Indian Child Welfare Act, 25 U.S.C. 1901-1963, were properly followed; and
  - c. Due process was provided to all interested persons participating in the state proceeding; and
  - d. The state court proceeding does not violate the public policies, customs, or common law of the tribe.
2. Court Orders of other Tribal Courts - Court orders of other Tribal Courts involving children over whom the Juvenile Division could take jurisdiction shall be recognized by the Juvenile Division after the court has determined:
- a. That the other Tribal Court exercised proper subject matter jurisdiction over the parties; and
  - b. Due process was accorded to all interested parties participating in the other Tribal Court proceeding.
3. Tribal Interest - Because of the vital interest of the tribe in its children and those children who may become members of the Tribe, the ordinances, 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.

## **706. PROCEDURES AND AUTHORIZATIONS**

- A. Rules of Procedure - The procedures in the Juvenile Division shall be governed by the rules of procedure for the Tribal Court which are not in conflict with this Chapter.

- B. **Cooperation and Grants** – The Juvenile Division is authorized to cooperate fully with any federal, state, tribal, public or private agency in order to participate in any foster care, shelter care, treatment or training program(s) and to receive grants-in-aid to carry out the purposes of this Chapter. This authority is subject to the approval of the tribal council if it involves an expenditure of tribal funds.
- C. **Social Services** – The Juvenile Division shall utilize such social services as may be furnished by any tribal, federal, or state agency provided that it is economically administered without unnecessary duplication and expense.

#### **707. JUVENILE DIVISION PERSONNEL.**

- A. **Counsel for Parents and Child Offenders** – Parents and those children alleged to be child offenders under Section 703 F.1. may be represented at each stage of proceedings under this Chapter by an attorney or lay advocate at their own expense. It is prudent and advisable for the parents to have representation.
- B. **Court Appointed Special Advocate (CASA)** – At every stage of the proceedings conducted under this Chapter, the Juvenile Division may appoint an advocate for the child, who may be a lawyer. A non-lawyer may serve as a special advocate only if certified by the Child Welfare Committee.
  - 1. The duty of the CASA is to represent the interests of the child. A child fourteen years of age or older is presumed capable of determining what is in his or her best interests. It is the duty of the CASA to represent the child's wishes in such cases. For children less than fourteen years of age, the CASA shall make a determination as to the best interests of the child regardless of whether that determination reflects the wishes of the child. However, the wishes of the child are always relevant to the determination of best interests and shall be weighed according to the competence and maturity of the child.

2. The CASA shall perform the following duties:
  - a. Appear at all hearings to represent competently the interests of the child in proceedings before the court.
  - b. Conduct an independent investigation, including interviewing the child, parents, social workers, and other persons to properly ascertain the facts and circumstances underlying the allegation that the child is within the jurisdiction of the 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 court at each hearing held before the court.
  - e. Urge that specific and clear orders are entered for evaluation, assessment, services and treatment for the child and his family
  - f. Monitor implementation of case plans and dispositional orders to determine whether services ordered by the court are actually provided, are provided in a timely manner, and are accomplishing their desired goal.
  - g. Inform the court if the services are not being made available to the child and/or family, if the family fails to take advantage of such services, or if such services are not achieving their purposes.
  - h. Identify the common interests among the parties and, to the extent possible, act as mediator to promote a cooperative resolution of the matter.
  - i. Consult with other professionals liberally in identifying the child's interests, current and future placements, and necessary services.

- j. 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 jurisdiction of the Juvenile Division.
- k. Attend training programs as prescribed by the Child Welfare Committee.

#### **708. CHILD WELFARE COMMITTEE**

- A. Establishment - The Child Welfare Committee is hereby created for the purpose of protecting the best interests of the child and promoting the stability and security of the Tribe and its Indian Families by fully exercising the Tribe's rights and responsibilities under the Indian Child Welfare Act of 1978 and this Chapter.
- B. Membership - The Child Welfare Committee shall consist of seven (7) adult members of the tribe appointed by the Executive Council to serve for a term of two (2) years. Upon the initial establishment of the Committee, four members shall serve for three (3) years, and three shall serve for two (2) years. The members of the Committee shall annually elect one of themselves as Chair who shall preside over all meetings. Any member who misses three consecutive regular meetings of the Committee without excuse to the Chair shall be considered as resigning from the Committee, and the Tribal Council shall fill the vacancy. No member of the Committee shall simultaneously serve on or be employed by an agency who provides services for children subject to the jurisdiction of the Juvenile Division.
- C. Duties - The Child Welfare Committee enjoys only the authority which is expressly delegated to it in this Chapter or in other enactment by the tribal government. The Child Welfare Committee shall have the following duties:
  - 1. Advise the tribal government on child welfare matters and recommend policies and procedures for implementing federal and tribal child welfare law.

2. Monitor child welfare proceedings involving tribal members in the state or tribal courts.
  3. Make determinations regarding intervention in state court proceedings and regarding transfer of jurisdiction from state court to the tribal court.
  4. Make case management recommendations to the tribal social services workers, placement agency workers, and the Tribal Prosecuting Attorney regarding the care, custody and supervision of tribal children under court jurisdiction, including recommendations as to case plan, guardianship, termination of parental rights and guardianship. Such recommendations shall be filed with the Juvenile Division.
  5. License and supervise group, shelter, foster and adoptive homes and child placing agencies.
  6. Engage in further activities as to protect and improve the welfare of the children of the Bay Mills Indian Community.
  7. Certify non-lawyers to serve as Court Appointed Special Advocates (CASA).
- D. Voting - Actions of the Child Welfare Committee shall be decided by a majority vote of those present at the meeting. The Chair is entitled to vote on this matter.
- E. 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 a Child Welfare Committee member is contacted outside of a review by an interested party, he shall refer the party to the caseworker, social worker, advocate, or the relevant office as appropriate. The Committee may, however, request that further information be provided or that further investigation be conducted by the social worker or other appropriate authority.
- F. Conflicts of Interest

1. Child Welfare Committee members who are foster parents or CASAs may not participate as Committee members in the review of children who are in their own care.
2. A Child Welfare Committee member may participate in the discussion but need not vote on actions involving the member's extended family.

**G. Confidentiality**

1. Meetings of the Child Welfare Committee shall not be open to the public, except for persons authorized to attend by the Child Welfare Committee.
2. Confidentiality of case information and other Child Welfare Committee records shall be maintained. Committee members are subject to the same standards of confidentiality as other court personnel, Department of Social Service workers and other professionals working in the child welfare system.
3. Case materials and all other Child Welfare Committee records shall be kept in a secure area. The recording secretary shall collect case plan packets at the conclusion of 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.

**709. PROTECTIVE SERVICE WORKERS AND PROBATION OFFICERS**

**A. Powers and Duties of Protective Service Workers and Probation Officers**

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 Subsection 1, within 24 hours initiate a prompt and thorough investigation which shall include a determination of the nature, extent, and course 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 the investigation, the protective service worker shall seek the assistance of and cooperate with the 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 that requires medical treatment or hospitalization. For purposes of this Subsection, "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 protective services worker, 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 Section 712. Law enforcement officials shall cooperate with protective services personnel to remove a child from the custody of his parents, guardian, or custodian when necessary.
5. After investigation, 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 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, prevention services, and document such offer(s).
  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 protective services division of the tribal Social 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 protective services worker, the law enforcement agency or protective services worker may inform the person who made the report as to the disposition of the report.
- B. Cooperation from Law Enforcement – Law enforcement officials shall cooperate with the protective services worker and the Tribal Social Services Department in conducting investigations pursuant to this Section.
- C. Limitations of Authority; Duty to Inform – Before offering protective services to a family, a worker shall inform the family that he has no legal authority to compel the family to receive such services. If the family declines the offered services, the worker may request authorization to initiate a child protection petition in the Juvenile Division. Nothing in this section limits the authority of the protective services worker to act in emergency situations pursuant to Section 712 or to obtain a medical evaluation of the child pursuant to Section 725.
- D. Duties of Probation Officers – The Probation Officer shall have the following duties:



1. Receive and screen referrals concerning child anti-social behavior from schools, law enforcement, parents, tribal and county agencies and members of the general public.
2. Investigate and make dispositional recommendations to the Court of all cases involving child offenders.
3. Attend all hearings involving a child offender and supervise implementation of dispositional orders.
4. Schedule case review hearings for child offenders and advise the Court of the efforts of the child and his family in complying with the Court's dispositional orders.
5. Provide supportive, preventive and supervisory counseling to all child offenders and their families placed on probation by court order.
6. Provide information and supportive services to agencies and courts who work with child offenders subject to Juvenile Division jurisdiction.
7. Provide supervision to child offenders and alleged child offenders in secure detention.
8. Assist in the development and implementation of programs and services to prevent and rehabilitate children who are at risk of anti-social and/or criminal behavior.

710. **CASE MANAGEMENT TEAM** - The Case Management 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 Court. It is designed to promote cooperation, communication, and consistency among agencies. The Case Management Team shall facilitate the decision-making process, and its activities shall be determined by the Mental Health/Social Services Coordinator. Confidentiality shall be maintained by all Team Members.

A. **Team Duties** - The Case Management Team shall:

1. Monitor child abuse and neglect activities to ensure that adequate preventive, protective and corrective services are provided.
  2. Review and track all child abuse and neglect cases which have been referred by the protective services worker for case plan recommendations.
  3. Monitor, review and recommend case plans for children subject to court jurisdiction and for tribal children subject to the jurisdiction of another court. Case plans for children subject to the jurisdiction of the Juvenile Division shall be filed with the Court.
  4. Send local Case Management Team data to area child protection teams.
- B. Team Membership – The Case Management Team shall include, but not be limited to, persons with knowledge and experience in the following matters; medical health; mental health; substance abuse; social services; law enforcement; protective services; and law. The Team may request the assistance of any other person in carrying out its responsibilities.
- C. Service Facilitation – The Case Management Team shall, in carrying out its duties under Subsection A, undertake the following:
1. Identify available community resources, programs and services.
  2. Provide recommendations to various pertinent agencies.
  3. Promote cooperation, communication and consistency among agencies.
  4. Provide a forum for debating what actions would be best to promote the well being of Indian children.
  5. Respond to inquiries from the community, area child protection teams and other individuals and groups.

6. Assist in the development and implementation of strategies by communities to create environments which provide opportunities for community members to lead meaningful, productive, self-fulfilling, and rewarding lives. These environments should promote the dignity, self-worth, self-respect, and self-sufficiency of community members.

**711. DUTY TO REPORT CHILD ABUSE AND NEGLECT**

- A. **General Duty to Report - Any person who has a reasonable cause to suspect that a child is “in need of care” shall immediately make a report to the Protective Services Division of Tribal Social Services or to the Tribal Law Enforcement Department. Any person so reporting may remain anonymous, unless such person is in a category contained in Subsection B.**
- B. **Specific Duty to Report**
  1. **A physician, coroner, dentist, medical examiner, nurse, a person licensed to provide emergency medical care, community health representative, audiologist, psychologist, family therapist, certified social worker, social worker, social work technician, substance abuse counselor, school administrator, school counselor or teacher, law enforcement officer, or duly regulated child care provider who has reasonable cause to suspect that a child may be a child in need of care shall make immediately, by phone or otherwise, an oral report, or cause an oral report to be made, of the suspected condition to the tribal Protective Services Division or tribal Law Enforcement Department.**
  2. **Within 72 hours after making an oral report, the reporting person shall file a written report. If the reporting person is a member of the staff of a hospital, agency, or school, the reporting person shall notify the person in charge of said entity of his finding and that the report has been made, and shall make a copy of the written report available to the person in charge. One report from a hospital, agency or school shall be considered adequate to meet the reporting requirement. A member of the staff of a**

hospital, agency or school shall not be dismissed or otherwise penalized for making a report required by this Section or for cooperating in an investigation.

3. The Protective Services Division shall provide to any person making a report pursuant to Subsection B within 60 days of its receipt the Division's determination of the report as founded or unfounded.
- C. **Immunity from Liability** - All persons or agencies complying in good faith with the provisions of this Section shall be immune from civil liability and criminal prosecution.
  - D. **Abrogation of Privilege** - Any legally recognized privileged communication, except that between attorney and client, is abrogated and shall neither constitute grounds for excusing a report otherwise required to be made nor for excluding evidence in a civil child protective proceeding resulting from a report made pursuant to this Section.
  - E. **Penalty for Not Reporting** - Any person mandated to report under Subsection B who knowingly fails to do so or willfully prevents someone else from doing so shall be subject to a charge of civil contempt with a civil forfeiture of up to \$5,000.
  - F. **Abuse and Neglect Reports** - Persons mandated to report under Section 711.B shall include the following information in the written report:
    1. Names, addresses, and tribal affiliation of the child and his parents, guardian or custodian.
    2. The child's age.
    3. The nature and content of the child's abuse or neglect.
    4. Previous abuse or neglect of the child or his siblings.
    5. Name, age and address of the person alleged to be responsible for the child's abuse or neglect.

6. Name and address of the person or agency making the report.
- G. Medical Examinations - The Protective Services Division may request a court order for a medical evaluation of a child pursuant to Section 725 of this Chapter. The Division shall have a medical evaluation done without a court order if the child's health is seriously endangered and a court order cannot be obtained.
1. When a child suspected of 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.
  2. The physician shall immediately report the results of the evaluation to the Protective Services Division, law enforcement and the Court, if requested to do so. The physician's written report to the Division shall contain summaries of the evaluation.

## 712. INVESTIGATION AND EMERGENCY REMOVAL

- A. Investigative Orders; Orders for Examination - Upon a showing of probable cause to believe that a child is a child in need of care, which may be done ex parte, the Court may order further investigation and discovery, including but not limited to taking of photographs, gathering physical evidence, and examinations or evaluations of a child, parent, guardian or custodian, by a physician, dentist, psychologist, or psychiatrist.
- B. Authority to Remove - Upon application by any person which may be ex parte, if the Court finds need of care and that the conditions in which the child is found present a substantial risk of harm to the child's life, physical health or mental well-being, the Court may order the child be taken into custody. The Court may include in such an order:
1. An authorization to enter specified premises to remove the child, and
  2. A directive to place the child in protective custody pending preliminary hearing.

- C. **Emergency Removal without a Court Order** – A child may be taken into protective custody without a court order by a law enforcement officer or the tribe’s protective services worker if such person has probable cause to believe the child is a child in need of care, and
1. Failure to remove the child may result in a substantial risk of death, serious injury, or serious emotional harm, or;
  2. The parent, guardian or custodian is absent, and it appears, from the circumstances, that the child is unable to provide for his 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.

If grounds for removal are corrected, the child may be returned to the parent by the person originally authorizing removal or by the protective services worker.

### **713. NOTICE OF REMOVAL**

- A. **Notice to the Juvenile Division** – After a child is removed from his home, the person who removed the child shall attempt to contact the Juvenile Division within six (6) hours. The attempt to contact the court shall be made, by the removing person, no later than 12:00 p.m. (noon) the next court working day.
- B. **Notice to the Parent, Guardian or Custodian** – The person removing the child shall make all reasonable efforts to notify the parents, guardian or custodian, within 12 hours of the child’s removal. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment, or other location where the parent, guardian or custodian is known to frequent with regularity. If the parent, guardian or custodian cannot be found, notice shall be given to members of the extended family of the parent, guardian or custodian and/or the extended family of the child. Said notice shall advise the parent, guardian or custodian of their rights under this Chapter.

- C. Notice to Child's Tribe if Different from Tribe whose Court is Exercising Jurisdiction - If the Juvenile Division asserts jurisdiction over a person who is a member of an Indian Tribe other than the Bay Mills Indian Community, the Tribal Court shall notify the Tribal Court of its tribal member that jurisdiction has been asserted.

#### **714. PLACEMENT OF CHILDREN**

- A. Restrictions - A child alleged to be a child in need of care shall not be placed in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to have committed an act which would be criminal if committed by an adult.
- B. Placement Priorities - A child may be placed in the following community-based shelter care facilities listed in order of preference:
  - 1. Members of the child's extended family,
  - 2. An Indian Family of the same tribe as the child which is licensed as a foster home or an Indian family otherwise authorized by law to provide care this child,
  - 3. A facility operated by a licensed child welfare services agency or an Indian tribe, or
  - 4. Any other suitable placement which meets the standards for shelter care facilities established by the Tribe.
- C. Least Restrictive Setting - If a child cannot be returned to his parents, the child shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed in reasonable proximity to his home, taking into account any special needs of the child.

#### **715 INFORMAL ADJUSTMENT CONFERENCES**

- A. After the filing of a petition, the Juvenile Division may hold an informal conference with the child and the child's parent(s), guardian, or custodian to discuss alternatives to move forward with the petition if:
  - 1. An informal adjustment of the matter would be in the best interest of the child and the tribe, and
  - 2. The child and the child's parent(s), guardian, or custodian consent to an informal adjustment conference after they have received an explanation of their rights.
  
- B. This Section does not authorize the Juvenile Division to compel any involuntary action of the parties involved.
  
- C. At the informal adjustment conference, Juvenile Division (with the voluntary agreement of the parties), may:
  - 1. Refer the child and the child's parent(s), guardian, or custodian to a community agency for assistance; or
  - 2. Define terms of supervision calculated to assist and benefit the child, which regulate the child's activities and are within the ability of the child to perform.
  
- D. The Juvenile Division shall set forth in writing conference findings and the disposition agreed to by the parties. The report shall be made available to and signed by the child, child's parent(s), guardian, or custodian. The child advocate, and parent's attorney shall also receive copies of the report.
  
- E. If an informal adjustment is agreed to, the Juvenile Division shall hold the petition in abeyance or order it dismissed to be refilled, if at all, at a later date without prejudice.
  
- F. Any disposition arranged through the informal adjustment procedure of this Section shall be concluded within six (6) months.
  
- G. The Child Welfare Committee or its designee shall review the child's progress every thirty (30) days. If, at any time after the initial thirty (30) day period, the Committee concludes that positive results are not being achieved, the



Committee shall direct the protective service worker to file a petition for a formal adjudicatory hearing.

- H. No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any other proceeding involving the child under this Chapter.

#### **716. FILING CHILD PROTECTION PETITION**

- A. Authorization to File Petition - Upon authorization by the tribal prosecutor, the child protective services worker shall initiate formal child protection proceedings by filing a child protection petition on behalf of the tribe and in the best interests of the child.
- B. Time Limitations - If a child has been removed from the home, then a child protection petition shall be filed with the Juvenile Division no later than 12:00 p.m. (noon) of the second court working day following the removal.
- C. Contents of Petition - The child protection petition shall set forth the following with specificity:
  - 1. The name, birth date, sex, residence and tribal affiliation of the child;
  - 2. The basis for the court's jurisdiction;
  - 3. The specific allegation which cause the child to be a child in need of care;
  - 4. A plain and concise statement of the facts upon which the allegations of child in need of care are based, including the date, time and location at which the alleged facts occurred;
  - 5. The names, residences and tribal affiliation of the child's parents, guardians or custodians, if known; and
  - 6. If the child is placed outside of the home where the child is placed, the facts necessitating the placement and the date and time of the placement.

#### **717. FILING CHILD OFFENDER PETITION**

- A. **Authorization to File Petition** – The tribal prosecutor shall initiate child offender proceedings on behalf of the Tribe. Nothing in this Section shall preclude law enforcement or protective services personnel from taking emergency action under Section 712 of this Chapter.
  
- B. **Contents of Petition** – The child offender petition shall set forth the following with specificity, of a citation issued or incident report prepared by law enforcement personnel:
  - 1. The name, birth date, age, sex, residence and tribal affiliation of the child;
  - 2. The basis for the Court’s jurisdiction;
  - 3. The specific allegations which cause the child to be a child offender;
  - 4. A plain and concise statement of facts upon which the allegations of child offender are based, including the date, time and location at which the alleged facts occurred;
  - 5. The names, residences and tribal affiliation of the child’s parents, guardians or custodians, if known; and
  - 6. If the child is in emergency detention, the location of placement and the facts on which the determination to place was based, including the time and date of placement.
  
- C. **Time Limitations** – If a child has been placed in emergency detention, the child offender petition shall be filed with the Juvenile Division no later than 12 p.m. (noon) of the second court working day following placement.
  
- D. **Trial as an Adult** – At the discretion of the trial judge sitting on the case, a child who is 16 years of age or older and accused of an offense prohibited by Chapters VI and/or VIII, or by federal criminal law applicable to the Reservation may be tried as an adult. The tribal judge shall conduct a hearing to determine whether the best interests of such child or the community require that the child be

considered an adult for the purpose of adjudicating the particular offense charged.

**718. NOTICE AND SERVICE OF SUMMONS**

**A. General - Unless a party must be summoned as provided in Subsection (B), a party shall be given notice of a proceeding in the Juvenile Division in any manner authorized by this Chapter or the Tribal Court Code.**

**B. Summons - In a Juvenile Division proceeding, the summons shall be issued and served on the parent, and the person with whom the child resides, if other than a parent or a court-ordered custodian, directing such person to appear with the child for trial. The summons shall include a notification of the parties' rights under this Chapter. The Court may direct that the child's appearance in court is unnecessary.**

**1. In a proceeding for termination of parental rights, the summons must be issued and served on the parent and the person with whom the child resides, if other than the parent or a guardian, for a hearing on a petition seeking the termination of parental rights. The Court may direct that the child's appearance in court is unnecessary.**

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

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

**3. Manner of Serving Summons**

- a. Except as provided in Subsections b and c below, a summons required under Section 718 must be served by delivering the summons to the party personally.
- b. If personal service of the summons is impracticable or cannot be achieved, the Court may direct that it be served by registered or certified mail addressed to the last known address of the party, return receipt requested, and restricted to the addressee.
- c. If the Court finds service cannot be made because the whereabouts of the person to be summoned has not been determined after reasonable effort, the Court may direct any manner of substituted service, including publication.
- d. If personal service of the summons is impracticable or cannot be achieved the Court may direct that it be served in a manner reasonably calculated to provide notice.

#### 4. Time of Service

- a. A summons shall be served at least:
  - i. 7 days before adjudication,
  - ii. 14 days before hearing on a petition to terminate parental rights
- b. If the summons is served by registered mail, it must be sent at least 7 days earlier than Subsection (a) requires for personal service of a summons.
- c. If service is by publication, the published notice, which does not require publication of the petition itself, shall appear in a newspaper in the county where the party resides, if known, and if not, in the county where the action is

pending. The published notice must appear one or more times 14 days before the hearing.

- C. **Notice of Hearing.** Notice of hearing must be given in writing which may be on the record or mailed to the last known address at least 7 days prior to the hearing, unless provided otherwise in this Chapter.
1. **Persons Entitled to Notice.** The Court shall insure that the following persons are notified of each hearing:
    - a. The parent or parents,
    - b. The attorney for the parent,
    - c. The child or the advocate for the child,
    - d. The legal guardian or custodian other than the parent, if any,
    - e. The Tribal Attorney,
    - f. The responsible child placing agency,
    - g. The CASA of a party appointed pursuant to this Chapter,
    - h. Agency staff by whom the child is supervised and/or counseled, and
    - i. Any other person the Court may direct to be notified.
  2. **Preliminary Hearing** – When a child is placed, reasonable efforts shall be made to notify the parents of the child or extended family pursuant to Section 712 [Emergency Removal] as soon as the hearing is scheduled, and the notice may be in person, in writing, on the record, or by telephone.
  3. **Termination Proceedings** – Notice of a hearing on a petition to terminate parental rights must be given in writing or on the record at least 14 days before the hearing.

4. When a party fails to appear in response to a notice of hearing, the Court may order the party's appearance by summons or subpoena.
- D. Subpoenas - The attorney for a party or the Court on its own motion may cause a subpoena to be served on a person whose testimony or appearance is desired. It is not necessary to tender advance fees to the person served a subpoena in order to compel attendance.
  - E. Waiver of Service - A person may waive notice of hearing or service of process. The waiver shall be in writing. When a party waives service of a summons required by Section 718 B, the party must be advised as set forth in Section 718 B(3).
  - F. Subsequent Notices - After a party's first appearance before the 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 hearing as provided in Subsection (B) unless a prior court appearance of the party in the case was in response to service by summons.
  - G. Putative Fathers - If the court determines that the child has no father as defined in Section 703 N, the Court shall take appropriate action as described in this Subsection.
    1. The Court shall take initial testimony on the tentative identity and address of the natural father. If the Court finds probable cause to believe that an identifiable person is the natural father of the child, the Court shall direct that notice be served on that person in the manner as provided in this Section. The notice shall include the following information:
      - a. That a petition has been filed with the 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.
2. After notice to the putative father the Court may conduct a hearing and determine that:
  - a. The putative father has been personally served or served in some other manner which the Court finds to be reasonably calculated to provide notice to the putative father. If so, the 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 according to Section 703 N; interests of justice so require, it shall not be necessary for the mother of the child to join in an acknowledgement. The Court may extend the time for good cause shown.
  - c. There is probable cause to believe that another identifiable person is the natural father of the child. If so, the Court shall proceed with respect to the other person in accord with this Subsection (G).
  - d. After diligent inquiry, the identity of the natural father cannot be determined. If so, the court shall publish notice at least once in a manner calculated to alert a person who may be the father of the child. If no person comes forward the court shall terminate the parental rights of the unknown father and proceed without further notice.
3. The 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 Court.

**719. PRELIMINARY HEARING**

**A. Time for Hearing - If a child:**

1. Has been released to his parent, guardian or custodian, the Court shall conduct a preliminary hearing within 10 days after filing of the petition.
2. Has been placed out of home, the court shall conduct a preliminary hearing by 12:00 p.m. (noon) of the second court working day following the placement for the purposes of determining:
  - a. Whether probable cause exists to believe the child is subject to the court's jurisdiction as a child in need of care or a child offender; and
  - b. Whether the home conditions continue to be such as there is no alternative to removal to adequately safeguard the child.

**B. Absence of Parent at Preliminary Hearing.** If the child's parent(s), guardian, or custodian is not present at the preliminary hearing, the Court shall make an inquiry into what efforts have been made to notify and to obtain the presence of the parent(s), guardian, or custodian. If it appears that further efforts are likely to produce the child's parent(s), guardian or custodian, the Court shall recess for not more than 24 hours and direct the petitioner to make continued efforts to obtain the presence of the child's parent, guardian, or custodian. The preliminary hearing may be conducted in the parent's absence.

**C. Conduct of Preliminary Hearing.** The Court shall read the allegations in the petition in open court, unless waived and shall advise the parent of the right to have counsel represent them, at their own expense, and their right to a trial on the allegations in the petition. After advising the parent of the right to remain silent, the Court shall allow the parent an opportunity to deny or admit the allegations and make a statement of explanation.



The same procedure shall be followed for a preliminary hearing involving a child alleged to be a child offender, provided that the rights stated herein for parents shall be afforded to the child in such a hearing.

- D. Testimony at Preliminary Hearing - The Court shall hear testimony concerning:
  - 1. The circumstances that gave rise to the petition; and
  - 2. The need for continued placement.
- E. Finding of No Probable Cause - If probable cause to believe the child is a child offender or a child in need of care is not found, the petition shall be dismissed, and the child shall be released.
- F. Finding of Probable Cause - If the Court finds that probable cause exists to believe the child is a child offender or child in need of care, the Court:
  - 1. Shall order the parent, guardian or custodian to appear at an adjudicatory hearing on a date and time set by the Court; and
  - 2. May release the child in the custody of either of the child's parents, guardian or custodian under such reasonable terms and conditions as are necessary for either the physical or mental well-being of the child; or
  - 3. May order placement of the child with someone other than a parent, guardian or custodian if the Court, after hearing, determines that both of the following conditions exist:
    - a. Custody of the child with a parent, guardian, or custodian presents a substantial risk of harm to the child's life, physical health or mental well-being and no provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from such risk

- b. Conditions of custody of the child away from a parent, guardian or custodian are adequate from a parent, guardian or custodian are adequate to safeguard the child's health and welfare.
- G. Court Ordered Examinations - The Court may at any time after conducting a preliminary hearing at which probable cause to proceed upon a petition is found, order any involved child, parent or guardian to undergo a physical, mental, substance abuse, or psychological examination by a qualified professional.

## **720. ADJUDICATORY HEARING**

- A. Purpose - The Court shall conduct an adjudicatory hearing for the purpose of determining whether the facts support a finding that the child is a child in need of care or that the child is a child offender.
- B. Commencement - The adjudicatory hearing shall commence as soon as possible but not later than 45 days after the petition is filed with the Court.
- C. Continuances - Continuances of an adjudicatory hearing may be granted by the Court but only for any of the following purposes:
  - 1. Upon stipulation of the parties;
  - 2. Where service of process cannot be completed;
  - 3. The Court finds that the testimony of presently unavailable witness is needed;
  - 4. One time only for up to 14 days at a parent's request for parents to obtain counsel, or for an alleged child offender to obtain counsel; or
  - 5. For good cause shown.
- D. Evidence and Conduct of Hearing - The formal rules of evidence shall not apply at these proceedings. All relevant and material evidence which is reliable and trustworthy

may be admitted at the trial and may be relied upon by the Court to the extent of its probative value. Hearsay contained in a written investigative report shall not prevent that report from being admitted into evidence, provided that the preparer of the report is present and available to provide testimony.

1. The parties shall be afforded an opportunity to examine and controvert written reports received by the Court and shall be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.
2. The Court may rely upon conference telephone or other electronic devices that permit all those appearing or participating to hear and speak to each other.

E. Findings and Judgment - If the allegation of the petition is sustained by a preponderance of the evidence, the Court shall find the child to be a child in need of care, or a child offender, as the facts indicate, and schedule a dispositional hearing. The Court may also enter orders of further discovery, evaluation and assessment and other orders to protect the child. If the allegations of the petition are not sustained, the Court shall dismiss the matter and release the child.

721. DISPOSITIONAL HEARING - A dispositional hearing is conducted to determine measures to be taken by the Court with respect to the child properly within its jurisdiction and, when applicable, against any adult, once the Court has determined following trial, plea of admission or no contest that the child comes within its jurisdiction.

A. The dispositional hearing may be held immediately after the adjudicatory hearing. The interval, if any, between the adjudicatory hearing and the dispositional hearing is within the discretion of the Court. When the child is in placement, the interval may not be more than 35 days except for good cause. 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 Section 718 (Notice and Service of Summons).

- B. Proposed Disposition (Case Plan) – The Case Management Team shall present the case plan to the Court, the counsel of record, the CASA, and the tribal prosecutor at least three (3) days before the dispositional hearing.**
- 1. The Case Management Team shall prepare a written report describing all reasonable and appropriate alternative dispositions, including reports of the involved child placement agency, if any, and protective services worker. The report shall contain a specific plan for the care of and assistance to, the child and/or the child’s parent(s), guardian, or custodian designed to resolve the problems presented in the petition.**
  - 2. The report shall contain a detailed explanation of the necessity for the proposed disposition plan and its benefits to the child. The report shall include the effort to prevent removal, or to rectify conditions that caused removal, of the child from the home.**
  - 3. If the report recommends placement of the child somewhere other than with the child’s parent, guardian, or custodian, it shall state the specific reasons underlying its placement recommendation.**
  - 4. Each case plan shall be reviewed by the Child Welfare Committee; the Committee shall advise the Court in writing of the disposition which is recommended by vote of the members.**
- C. Evidence – All relevant and material evidence, including oral and written reports may be received and may be relied on to the extent of its probative value, even though such evidence may not be admissible at trial.**
- 1. The parties shall be given an opportunity to examine and controvert written reports so received and may cross-examine individuals making reports when such individuals are reasonably available.**
  - 2. No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the dispositional**

phase, of materials prepared pursuant to a court ordered examination, interview or course of treatment.

- D. **Disposition Orders** – The Court shall enter an order of disposition after considering the case service plan and other evidence offered bearing on disposition. The Court shall approve a case service plan and 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 his home.
- E. **Dispositional Alternatives** – If a child has been found to be a child offender or a child in need of care, the Court may make the following dispositions which are listed by priority:
1. Permit the child to remain with his parents, guardian, or custodian, subject to such conditions as the Court may prescribe;
  2. Place the child with a relative within the primary service area of the tribe, subject to such conditions as the Court may prescribe;
  3. Place the child in a licensed foster home within the primary service area of the tribe, subject to such conditions as the Court may prescribe;
  4. 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 Court may prescribe;
  5. Place the child in group home or residential care facility designated by the Court;
  6. Place the child in a juvenile offender facility designated by the Court;
  7. Direct the tribal prosecutor to file a petition to terminate parental rights under this Chapter; or

8. Require any child offender and/or his parent, guardian or custodian to pay a fine commensurate with the fine which would be imposed on an adult convicted of the same offense. For those cases in which the child offender is found to have violated the provisions of Section 703(F)(3)-(6), the Court may impose a civil remedial forfeiture of not more than \$500 for each incident.
- F. Restitution - The Court may require any child offender to pay restitution for any damage resulting from his action or inaction, which may be in the form of money or in community service. In addition, the Court may require the parent, guardian, or custodian of the child offender to pay restitution for damages caused by the offender.
- G. Amended Orders - If a child remains under the jurisdiction of the Court, an order may be amended or supplemented within the authority granted to the Juvenile Division in this Chapter at any time as the Court considers it necessary and proper and in the best interests of the child.

## **722. DISPOSITION REVIEW HEARINGS**

- A. Frequency - The dispositional order is to be reviewed at the discretion of the Court but at least once every six (6) months.
- B. Notice of Review - Notice of the review hearing shall be provided on the record or by ordinary mail as provided in Section 718(C).
- C. Purpose and Content of Review
  1. At a review hearing the Court shall review on the record the compliance with the case service plan prepared pursuant to Section 721 and the previous orders of the Court including:
    - a. Service provided or offered to the child and his parent, guardian or custodian and whether the parent, guardian, or custodian has complied with and benefited from those services.

- b. If visitation did not occur or was infrequent, the Court shall determine why visitation did not occur or was infrequent.
2. After review of the case service plan, the Court shall determine the extent of progress made toward alleviating or mitigating the conditions that cause the child to become and to remain a child offender or a child in need of care. The Case Management Team may submit a modified case plan, taking in to account circumstances which arose or became known since the time of the original case plan development. The Court may modify any part of the case plan including, but not limited to, the following:
  - a. Prescribing additional services that are necessary to rectify the conditions that caused the child to become or to remain a child offender or 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 offender or a child in need of care.
3. At a review hearing the Court shall determine the continuing necessity and appropriateness of the child's placement and review the recommendations on such placement of the Child Welfare Committee, the Case Management Team and the child placement agency, and shall 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.
4. If the child remains in placement, the Court shall determine at the dispositional hearing and at each review hearing whether the cause should be reviewed before the next review hearing required under this Section. In making this determination, the 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 home prior to the next review hearing required by this Section.
- D. Return of Child Without Hearing - In the event that the agency charged with the supervision of the child determines that the child should be returned to his home, the agency shall request a hearing on the determination, subject to the notice provisions of Section 718. If no party files an objection to the return within the time period prior to hearing, the Court may issue an order permitting return without a hearing.
- E. Reports - An agency report filed with the Court shall be accessible to all parties to the action and shall be offered into evidence.

#### **723. PERMANENCY PLANNING HEARINGS**

- A. Purpose - A permanency planning hearing shall be conducted to review the status of the child adjudicated as in need of care and the progress being made toward the child's return to his natural parents or to some other permanent home.
- B. Frequency of Hearings - The Court shall conduct a permanency planning hearing not more than 24 months after entry of the order of disposition and every 12 months thereafter, so long as the child remains a child in need of care. A permanency planning hearing may be combined with a disposition review hearing under Section 722 of this Chapter.
- C. Determination
  - 1. Child Returned - If parental rights to the child have not been terminated and the Court determines at a permanency planning hearing that the return of the



child would not cause a substantial risk of harm to the child's life, physical health, or mental well-being, the Court shall order the child returned to his parent. In determining whether the return of the child would cause a substantial risk of harm to the child, the Court shall view the failure of the parent to substantially comply with the terms and conditions of the case service plan and dispositional orders of the Court as evidence that return of the child to his parent would cause a substantial risk of harm to the child's life, physical health, or mental well-being.

2. Child not Returned – If the court determines at a permanency planning hearing that the child should not be returned to his parent, Case Management Team and Child Welfare Committee shall each 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 remains a long-term foster or residential care.
  - d. A petition for guardianship under the Tribal Code be filed by the current caretaker of the child, the child, or the Tribal Social Services.
  - e. A petition to terminate parental rights under this Chapter be filed by Tribal Social Services.

- D. Placement Order – If the Court determines that the child should not be returned to his parents, the Court shall order permanent placement with a relative, long-term foster or residential care under Subsection C.2(a), (b) or (c), or continue the child in placement for a limited period so that petitions under Subsections C.2(d) or (e) may be filed.

## 724. TERMINATION OF PARENTAL RIGHTS

- A. Purpose – The purpose of this Section 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 Section 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, and that termination of the parent-child relationship is of such vital importance that it should be used only as a last resort when, in the opinion of the Court, all efforts have failed to avoid termination and it is in the best interests of the child concerned and of the Tribe to proceed under this Section.**
- B. Grounds for Involuntary Termination – The Court may terminate the parental rights of a parent to a child adjudicated a child in need of care if the Court finds, beyond a reasonable doubt, one or more of the followings:**
- 1. The parent of the child has abandoned the child without provision for his support and without communication for a period of at least 6 months. The failure to provide support and to communicate for a period of at least 6 months shall be presumptive evidence of the parent’s intent to abandon the child.**
  - 2. 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 physical injury, or physical or sexual abuse and the Court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent’ home.**
    - b. A parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so, and the Court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent’s home.**

3. The parent was a respondent in a proceeding brought under this Chapter, twelve (12) or more months have elapsed since the issuance of an initial dispositional order, and the Court, beyond a reasonable doubt, finds either of the following:
    - a. The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child, and there is a reasonable expectation that custody of the child by the parent is likely to result in serious emotional or physical damage to the child; or
    - b. Other conditions exist that cause the child to be a child in need of care, and there is a reasonable expectation that custody of the child by the parent is likely to result in serious emotional or physical damage to the child. 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 not reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child.
  4. Parental rights to one 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 parent(s) have been unsuccessful, and there is a reasonable expectation that custody of the child by the parent is likely to result in serious emotional or physical damage to the child.
- C. Termination at Initial Disposition – If a petition to terminate parental rights to a child is filed, the Court may enter an order terminating parental rights under Subsection (B) at the initial dispositional hearing.

- D. **Quality of Evidence** - The same rules of evidence which apply at adjudication under Section 720 shall apply in termination proceedings.
- E. **Termination of Parental Rights Order** - An order terminating parental rights under this Chapter may not be entered unless the Court makes findings of fact, states its conclusions of law, and includes the legal basis for the order. Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient. The Court shall state the findings and conclusions in a written opinion. If the Court does not issue a decision on the record following hearing, it shall file its decision within 60 days after the taking of final proofs.
- F. **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 approval of the Court. Relinquishment shall not be accepted or acknowledged by the Court prior to ten (10) days after birth of the child. The Court shall ensure that the parent understands the consequences of the voluntary termination prior to approving it. A parent who wishes to relinquish his parental rights shall be provided an interpreter if he does not understand English. Prior to the entry of an order of termination, the Court shall determine that entry of such an order is in the best interests of the affected child(ren) and of the Tribe.
- G. **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 an adoption decree pursuant to Chapter XI of the Tribal Code. A person who has voluntarily relinquished parental rights may withdraw such consent and demand re-establishment of the parent-child relationship upon a showing the Court of clear and convincing evidence that such consent was obtained by fraud or duress.
- H. **Child's Continued Right to Benefits** - An order terminating the parent-child relationship 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 Chapter be deemed to affect any rights and benefits that

the child derives from the child's membership in or eligibility for membership in a federally recognized Indian Tribe.

- I. **Advise of Right to Appeal** – Immediately upon entry of an order terminating parental rights, the Court shall advise the respondent parent orally or in writing that the parent is entitled to appellate review of the order. Appellate review shall be by right. The clearly erroneous standard shall be used in reviewing the findings of the Juvenile Division on appeal from an order terminating parental rights.
  
- J. **Post Termination Review Hearings** – If a child remains a ward of the Court following the termination of parental rights to the child, the Court shall conduct a review hearing, at least every twelve (12) months to review the progress toward permanent placement of the child. The 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.

#### **725. AUTHORIZATION OF MEDICAL TREATMENT**

- A. **Circumstances for Court Order** – At any time, regardless of whether a child is under the authority of the Court, the Court may authorize medical or surgical care for a child when:
  - 1. A parent, legal guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case; or
  - 2. A physician informs the 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 other custodian refuses or fails to consent. If time allows in a situation of this type, the Court shall cause every effort to be made to grant the parent, guardian, or custodian an immediate informal hearing, but this hearing shall not be allowed to further jeopardize the child's life or health.

- B. **Parental Use of Spiritual Treatment to be Given**  
Consideration – In making its order the Court shall give due consideration to any treatment being given the child by prayer through spiritual means alone or through other methods approved by tribal customs or traditions or religions, if the child or 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 any such individual practices the tribal customs, traditions or religion which is relied upon for such treatment of the child.
- C. **Written Order** – After entering any authorization under this Section, the Court shall reduce the circumstances, finding and authorization in writing and enter it in the records of the Court and shall cause a copy of the authorization to be given to the appropriate physician, hospital, or both.
- D. **Oral Authorization for Treatment Sufficient** – Oral authorization by the Court is sufficient for care or treatment to be given and shall be accepted by any physician or hospital. No physician or hospital nor any nurse, technician or other person under the direction of such physician or hospital shall be subject to criminal or civil liability in the court for performance of care or treatment in reliance on the court’s authorization, and any function performed there under shall be regarded as if it were performed with the child’s and the parent’s authorization.

726. **COSTS OF SUPPORT AND CARE** – With the exception of permanent custody orders, in the event that a child is removed from his home by an order of the Juvenile Division, the child’s parents, guardian or custodian may be ordered by the Court to pay the costs of the child’s support. Such payments are to be made to the clerk of Tribal Court, who shall in turn release them to the person or organization with whom the child is placed. Whenever the Court enters such a reimbursement order and the parent, guardian or custodian refuses to pay, that person shall be punishable under the contempt powers of the Tribal Court.

727. **EMANCIPATION**

- A. Petition – A child who is 17 years of age may petition the Court for emancipation. The petition shall be signed by the child, and shall contain the following information:**
- 1. The child’s full name and birth date, and the county and state where the child was born;**
  - 2. A certified copy of the child’s birth certificate;**
  - 3. The name and last known address of the child’s parents, guardian or custodian;**
  - 4. The child’s present address, and length of residency at that address;**
  - 5. A declaration by the child indicating that he has demonstrated the ability to manage his financial affairs, which may include any information which he considers necessary to support the declaration; and**
  - 6. A declaration by the child indicting that he has the ability to manage his personal and social affairs, which may include any information he considers necessary to support the declaration.**
- B. Affidavit Supporting Petition – The petition shall not be considered by the Court in the absence of an affidavit from any of the following persons which declares that the person has personal knowledge of the child’s circumstances and believes that under those circumstances emancipation is in the best interests of the child:**
- 1. Medical care provider, including physician, nurse, and nurse-practitioner;**
  - 2. Member of the clergy;**
  - 3. Psychologist or family therapist;**
  - 4. Social worker, including social work technician and certified social worker;**
  - 5. School administrator, teacher, or counsel; or**
  - 6. Law enforcement officer.**

- C. Notice of Petition – A copy of the petition and summons to appear at the hearing shall be served on the child’s parent or guardian. A notice of hearing shall be sent to the individual who provided the required affidavit in support of the petition.
- D. Evidentiary Requirements for Order of Emancipation – The Court shall issue an order of emancipation if it determines that emancipation is in the best interest of the child and the child establishes all of the following:
1. That the child’s parent or guardian do not object, or if objection is made, that the objecting parent or guardian is not providing the child with support;
  2. That the child is 17 years of age;
  3. That the child is a resident of the Reservation of the Bay Mills Indian Community;
  4. That the child has demonstrated the ability to manage his 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 for which the child might otherwise be eligible due to age;
  5. That the child has the ability to manage his personal and social affairs, including, but not limited to, proof of housing; and
  6. That the child understands his rights and responsibilities as an emancipated minor, as described in this Section.
- E. Effect of Emancipation – A child emancipated by order of the court shall be considered to have the rights and responsibilities of an adult, except those specific age requirements regarding voting, use of alcoholic beverages, and other health and safety regulations relevant to him/her because of his age. An emancipated child shall be considered as an adult for all of the following:



1. The right to enter into enforceable contracts, including rental leases;
2. The right to sue and be sued in his own name;
3. The right to retain his own earnings;
4. The right to establish a separate domicile;
5. The right to act autonomously in all business relationships, including property transaction and obtaining accounts for utilities, except for those estate or property matters that the Court determines may require a conservator or some guardian ad litem;
6. The right to earn a living, subject only to the health and safety regulations and tribal ordinances designed to protect those under the age of majority regardless of their legal status;
7. The right to authorize his own preventive health care, medical care, dental care, and mental health care, without parental knowledge or liability;
8. The right to marry;
9. The right, if a parent, to make decisions and give authority in caring for his own minor child; and
10. The right to make a will.

728. POWER OF ATTORNEY - A parent, legal custodian, or guardian (including tribal social service agencies), by a properly executed power of attorney, may delegate to another person for a period not exceeding six (6) months, any of the parent's, legal custodian's or guardian's child, except the power to consent to marriage or adoption of a child and the power to release a child for adoption.

729. LIMITED GUARDIANSHIP - The Court may appoint a temporary guardian under such terms and conditions as the Court sets forth in the written order. A temporary guardianship may be terminated if the Court determines that it is in the best interests of the child to change custody from the temporary guardian to a

new guardian or to return the child to the parent, guardian or custodian. The parent and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the Court. A temporary guardianship shall be established by parental consent only and shall be revocable by the Court upon parental request.

#### **730. CHILD PROTECTION RECORDS**

- A. Juvenile Division Records - A record of all hearings under this Chapter shall be made and preserved. All Juvenile Division records shall be confidential and shall not be open to inspection to any but the following:**
- 1. The child;**
  - 2. The child's parent, guardian or custodian;**
  - 3. The child's counsel or court appointed special advocate;**
  - 4. The Juvenile Division personnel directly involved in the handling of the case;**
  - 5. Any other person by order of the court, having legitimate interest in the particular case or the work of the court.**
- B. Law Enforcement and Social Services Records - All law enforcement and social services records shall be confidential and shall not be open to inspection to any but the following:**
- 1. The child;**
  - 2. The child's parent, guardian or custodian;**
  - 3. The child's counsel or court appointed special advocate;**
  - 4. Law enforcement and human services personnel including the Child Welfare Committee and Case Management Team, directly involved in the handling of the case;**

5. The Juvenile Division personnel directly involved in handling of the case;
  6. Any other person by order of the court, having legitimate interest in the particular case of the work of the court.
- C. Access to Child Protection Records – Upon written request to the protective services worker, child protection records shall be released under the following procedures:
1. Records may be released only to a person identified in Subsection B, above.
  2. The Tribal Social Services Department shall review the record to determine which sections may be shared without revealing the identity of the reporting person.
  3. The name and other identifying information of the reporting person need not be deleted if the entity requesting record access is a law enforcement agency, a prosecuting attorney, or a child protection agency of another jurisdiction.
  4. In the event that compelling reasons exist for the release of the reporting person’s name, that person must authorize release of his identity in writing. If the person does not do so, a court order shall be requested for release of the name.
  5. All information in the record shall be released, unless mental health records in the file are subject to a statement from the mental health provider that such records contain information which, if released, might be harmful to the mental health client or others.
  6. Any information released from child protection files shall be clearly designated as confidential.
- D. Unauthorized Release of Confidential Information – Any person who permits or encourages the unauthorized dissemination of information subject to this Section shall a civil remedial forfeiture, not exceeding \$5,000 for each action or omission. The Court may remit all or a portion of

the forfeiture to any person demonstrating harm from the dissemination.

**731. REHEARINGS.**

- A. Time and Grounds - A party may seek a rehearing or new trial by filing a written motion stating the basis for the relief sought with thirty (30) days after decision of disposition or supplemental disposition. The 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 Court, or presented but not previously considered by the Court, which if true, would cause the Court to reconsider the case.
- B. Notice - All parties must be given notice of the motion in accordance with Section 718.
- C. Response by Parties - Any response by parties must be in writing and filed with the Court and opposing parties within seven (7) days after notice of the motion.
- D. Procedure - The judge may affirm, modify, or vacate the decision previously made in whole or in part, on the basis of the record, the memoranda prepared, or a hearing on the motion, whichever the Court in its discretion finds appropriate for the case.
- E. Hearings - The Court need not hold a hearing before ruling on a motion. Any hearing conducted shall be in accordance with the rules for dispositional hearing. The Court shall state the reasons for its decision on the motion on the records or in writing.
- F. Stay - The Court may stay any order pending a ruling on the motion.

**732. APPEALS**

- A. Who can Appeal - Any party to a Juvenile Division hearing may appeal a final Juvenile Division order to Court of Appeals. An order terminating parental rights is appealable by right.

- B. Time Limit for Appeals - Any party seeking to appeal a final Juvenile Division order shall file a written notice of appeal with the court clerk within thirty (30) days of the final order.**
- C. Review Standard - The clearly erroneous standard shall be used in reviewing the findings of the Juvenile Division on appeal.**
- D. Record - For purposes of appeal, a record of the proceedings in the Juvenile Division shall be made available to the child, his parent, guardian or custodian, the child's and/or parent's counsel and others upon court order. Costs of obtaining this record shall be paid by the party seeking the appeal.**
- E. Stay of Order - An order of the Juvenile Division may be stayed upon order of the Appellate Court.**
- F. Conduct of Proceedings - All appeals shall be conducted in accordance with the Tribal Code and Tribal Court rules of procedure as long as those provisions are not in conflict with the provisions of this Chapter.**