



MENOMINEE NATION

THE MENOMINEE TRIBAL LEGISLATURE

TRIBAL ORDINANCE NO. 23-19

AMENDMENT TO THE CODE OF THE MENOMINEE INDIAN- TRIBE OF WISCONSIN

CHAPTER 278

CHILDREN'S CODE

FINAL APPROVAL:

BE IT ORDAINED BY THE LEGISLATURE OF THE MENOMINEE INDIAN TRIBE OF WISCONSIN:

Tribal Ordinance 23-19 is hereby enacted. Tribal Ordinance 23-19 amends Section 278-28 of Chapter 278, "Children's Code" of the Code of the Menominee Indian Tribe of Wisconsin as attached hereto and incorporated herein as if fully reproduced here.

CERTIFICATION

We, the undersigned Officers of the Menominee Tribal Legislature, do hereby certify that the foregoing Ordinance 23-__ "Amendment to Chapter 278 – Children's Code" was **duly adopted**, at a regular meeting of the Tribal Legislature held July 20, 2023, at which a quorum was present, by a vote of 7 for, 0 opposed, 1 abstention and 0 absent.

The undersigned also certify that the foregoing amendment to Code of the Menominee Indian Tribe of Wisconsin has been posted in accordance with the Menominee Constitution and Bylaws.

A handwritten signature in blue ink, appearing to read "Gena Kakkak", is written over a horizontal line.

**GENA KAKKAK, CHAIRWOMAN
MENOMINEE INDIAN TRIBE OF WISCONSIN**

A handwritten signature in blue ink, appearing to read "Spencer Gauthier", is written over a horizontal line.

**SPENCER GAUTHIER, SECRETARY
MENOMINEE INDIAN TRIBE OF WISCONSIN**

DATE: JULY 20, 2023

TRIBAL ORDINANCE 23-19

AMENDMENT TO CHAPTER 278 – CHILDREN’S CODE

1. Purpose. The purpose of this Amendment is to exempt certain delegations of authority by parents or guardians to third persons related to routine health and dental care from the provisions of Section 278-28 so long as such delegation complies with the health care providers’ permission to treat a minor policy.
2. Creation of Section 278-28 H. Section 278-28 H is created to read as follows:

H. Notwithstanding any other provision of this Section, a delegation for the purposes listed in subsection C(1) related to hospital admissions, or any delegation for the purposes listed in C(2) above may be made in any form acceptable to the provider of such services and the duration restrictions stated in subsection E above are not applicable to such a delegation.
3. Effect on Remaining Provisions of Chapter. The remaining provisions of Chapter 278 are unchanged.

Menominee Indian Tribe of Wisconsin

Legal Division

Memorandum

To: Jerry Waukau, Clinic Administrator
From: John Wilhelmi, Tribal Attorney – Gaming Emphasis
Date: April 10, 2023
Re: Amendment to Section 278-28 of Menominee Tribal Code

Attached is a red-line version of Section 278-28 of the Menominee Tribal Code showing a proposed change regarding Parental Power of Attorney. This Section generally regulates how a parent can assign decision making authority over their child to a third person. The provision is found in the Tribe's Children's Code which generally deals with issues of child welfare and protection of children. Although Chapter 278 is not directly related to health care operations, Section 278-28 as written acts to regulate minor consent procedures of the Tribal Clinic.

As has been discussed, the Clinic is seeking to update its forms and policies regarding minor consent. The attached proposed amendment to Section 278-28 would allow the Clinic to implement its preferred minor consent policies based on its understanding of what is best for both Clinic operations and child health consistent with the duties of health care providers to receive patient consent.

The proposed amendment would in essence remove Clinic policy and forms related to minor consent from the requirements of Section 278-28.

TRIBAL ORDINANCE 23-19

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The following Code does not display images or complicated formatting. Codes should be viewed online. This tool is only meant for editing.

Chapter 278

Children's Code

[HISTORY: Adopted by the Legislature of the Menominee Indian Tribe 6-21-2018 by Ord. No. 18-11; amended in its entirety 7-16-2020 by Ord. No. 20-16. Subsequent amendments noted where applicable.]

Article I

General Provisions

§ 278-1 Purpose.

The purpose of this Children's Code is to protect the children in the Menominee Tribal community. All departments, employees, volunteers and agents of the Tribe shall, first and foremost, strive to protect children and to create systems and structures that preserve opportunities for children to learn about their unique culture and heritage and to become productive members of the Menominee Tribal community. The Children's Code is a family-centered approach that places family as the primary source for understanding the needs and challenges of the child, with the belief that the child is best served in the context of families and that families are best served in the context of their community. Working with families to keep the child in the home or with relative care whenever safe and possible is best practice for child welfare, the family, and the community. The Menominee Tribe Children's Code shall be liberally interpreted and construed to fulfill the following purposes:

- A. To recognize and reaffirm the duty of a parent and/or guardian to provide for the safety, welfare, and guidance of their children;
- B. To preserve and restore the harmony and unity of the family by ensuring access to the mental and physical care and protection of the children and families which come within the jurisdiction of the Menominee Tribe;
- C. To protect children by taking actions and offering programs as may be proper and necessary to prevent delinquency, incorrigibility, truancy, neglect and abuse;
- D. To achieve the purposes of the Menominee Tribe Children's Code in a family environment whenever possible, separating the child from parents and extended family only when necessary for the child's welfare or safety, or in the interest of public safety;
- E. To facilitate the participation of children and family members into appropriate culturally relevant treatment, rehabilitation and aftercare;
- F. To seek out culturally appropriate methods for prevention, intervention and treatment of family disharmony;
- G. To ensure fundamental fairness consistent with the Children's Code, the Constitution and Bylaws of the Menominee Indian Tribe, the Menominee Tribe's Bill of Rights and other statutory provisions for every individual who comes within the jurisdiction of the Menominee Tribal Courts;
- H. To facilitate the purposes of the Menominee Tribe Children's Code through coordination, collaboration, and networking with other governments, agencies, and entities responsible for carrying out provisions of this chapter;

- I. To provide consistent, trauma-informed response through the Menominee Tribe Children's Code by the Menominee Police Department, Menominee Tribal Prosecutors, Menominee Family Services Department and the Menominee Tribal Court;
- J. To provide and clarify the roles, responsibilities, and duties for all departments and agencies providing help and services to our families. The Menominee Tribal Police Department, Crime Victims Program, Menominee Tribal Prosecutor's Office, Menominee Tribal Court, Menominee Tribal Clinic, Maehnowesekiyah, Menominee Tribal Family Services, local schools, and any other agencies involved with families under the jurisdiction of this chapter shall all cooperate with each other to ensure through the best efforts possible that families maintain their rights and receive the services and help outlined in this chapter;
- K. To preserve and restore the harmony and unity of the family by providing for the safety, well-being and protection of children and families, which come within the jurisdiction of the Menominee Tribe pursuant to this chapter and established policies and procedures;
- L. Every child is a gift from the Creator and is crucial to the future of the Tribe as a whole. Valuing and protecting children is essential to our belief system. It ensures the future of the Tribe and our ability to continue as a viable cultural entity; and
- M. To protect the fundamental liberty interest that parents have in the care and custody of their children.

§ 278-2 Courts, generally.

The Court may accept or decline State or Tribal Court transfers of child custody proceedings; however, it shall be the policy of the Menominee Tribe that, absent good cause, child custody proceedings involving Menominee children should be heard in the Menominee Tribal Courts.

§ 278-3 Jurisdiction.

- A. The Court shall have exclusive jurisdiction over all matters that are contained in this chapter. If a child resides or is domiciled within the exterior boundaries of the Menominee Indian Reservation or the child is a ward of the Court, then the Tribe has exclusive jurisdiction over the child and their family.
- B. The Court shall have exclusive jurisdiction over:
 - (1) Proceedings in which a child is alleged to be a child in need of protection and services, a juvenile in need of protection and services, or a delinquent child;
 - (2) Proceedings in which an unborn child is alleged to be in need of protection or services which can be ordered by the Court whose expectant mother habitually lacks self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, to the extent that there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered unless the expectant mother receives prompt and adequate treatment for that habitual lack of self-control. The Court also has exclusive jurisdiction over the expectant mother of an unborn child described in this section;
 - (3) Determining physical and/or legal custody of, or to appoint a caretaker or guardian for a child;
 - (4) The termination of parental rights;
 - (5) The adoption of a child;
 - (6) The commitment of a mentally ill or mentally disabled child;
 - (7) The emancipation of a child;

- (8) Parent(s), guardian(s), or caretaker(s) of the child;
- (9) Adults who reside in the child's home or who have contributed to encouraged, or tended to cause, by act or omission, a condition of a child described in § 278-1930;
- (10) Minor-aged siblings of the child, and other children who may reside or have significant contact with the child at the children(s) residence(s).

C. Territorial jurisdiction.

- (1) The Court may hear all matters under this chapter involving all Indian children residing within the exterior boundaries of the Menominee Indian Reservation or acts committed within the exterior boundaries of the Menominee Indian Reservation.
- (2) The Court may hear all matters under this chapter involving any child residing or domiciled within the exterior boundaries of the Menominee Indian Reservation.
- (3) The Court may decline jurisdiction in appropriate circumstances where a forum with concurrent jurisdiction is exercising its authority.

D. The Court shall have continuing jurisdiction over a child who is determined to be subject to this chapter and shall have the power to modify, extend, or dismiss previous orders, or consider petitions based upon new evidence concerning the child.

E. Jurisdiction obtained by the Court over a child is retained until terminated by any of the following situations:

- (1) The child becomes 18, except when the Court finds that it is in the best interest of the child to exercise jurisdiction up until the age of 21.
- (2) The case is transferred to adult Court.
- (3) When the Court enters an order terminating jurisdiction.

F. Whenever an order rendered under this chapter conflicts with a custody order, physical placement order, or other family Court order rendered by a Court, the order under this chapter shall take precedence.

G. An order accepting or denying jurisdiction is a final order for purpose of appeal.

§ 278-4 Venue.

- A. Venue for proceedings under this chapter shall be determined by the residence or domicile of the child or the jurisdiction where the alleged act occurred. Venue exists concurrently in the State Courts and other tribal Courts for Menominee children who reside outside the Menominee Indian Reservation.
- B. Where the residence of the child and the location of the alleged act are in different jurisdictions, initiating proceedings in one jurisdiction shall bar subsequent filing of proceedings in other jurisdictions for that alleged act unless a transfer of jurisdiction has been ordered.

§ 278-5 Duty to report child abuse or neglect.

- A. Any medical provider, child care provider, school personnel, law enforcement official, or social worker, acting in his or her official capacity, or any appointed or elected officials, having a reason to believe that any abuse or neglect has been inflicted upon a child shall, report the matter immediately to a law enforcement official or the Department.
- B. Any other person having reason to believe that a child has been subjected to serious injury or injuries

have been inflicted upon the child as a result of abuse or neglect shall report the matter immediately to a law enforcement official or the Department.

- C. A layperson who provides a report of abuse or neglect or other allegations that the child is in need of protection or services may at his/her discretion remain anonymous.
- D. Any person failing, neglecting or refusing to report a suspected case of child abuse or neglect pursuant to this section may be subject to civil citation, including, but not limited to, a penalty not to exceed \$500.

§ 278-6 Department of Family Services; responsibilities and duties.

A. The Department shall:

- (1) Help build healthy families using a trauma-responsive approach and holistic services to meet the self-identified needs of Indian families.
- (2) Receive from any source oral or written information regarding alleged abused or neglected children and, when appropriate, arrange for temporary out-of-home placement for such children on a twenty-four-hour basis.
- (3) Upon receipt of an initial report or information alleging abused or neglected children:
 - (a) Notify and coordinate with law enforcement throughout the investigation when criminal referrals are made;
 - (b) Conduct a thorough screening and investigation that 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.
- (4) Take a child into temporary protective custody if there are reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his/her surroundings and that his/her removal is necessary.
- (5) The Department shall cooperate with the law enforcement when it is necessary to remove a child from the custody of his/her parent(s), guardian(s), or caretaker(s).
- (6) During the 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. The Department shall determine whether any of such children is a child in need of protective services.
- (7) Make reasonable and active efforts, to prevent the need for removal of the child from the family, and offer culturally competent services to the family of any child determined to be a child in need of protective services.
- (8) If the Department in its assessment finds that Court intervention is warranted, it shall refer the matter to the Prosecutor.

B. The Department may cooperate with such state and community agencies as are necessary to achieve the purposes of this chapter. The Department may negotiate working agreements with other jurisdictions, subject to ratification by the Menominee Tribal Legislature.

C. Administrative rules and policies shall be promulgated to carry out the objectives and provisions of this chapter and the responsibilities of the Department.

D. The Department shall maintain records in accordance with their record retention policy.

§ 278-7 Law enforcement; responsibilities and duties.

Law enforcement shall:

- A. Investigate a child in need of protection and services, a juvenile in need of protection and services and delinquency reported or referred to it by any individual or agency regarding all matters under this chapter, pursuant to established protocols, including identified time lines.
- B. Be available 24 hours a day, seven days a week, to respond to and investigate reports of alleged children in need of protection and services and juveniles in need of protection and services and delinquency. Law enforcement shall immediately consult with the Department regarding the report if an emergency placement is necessary.
- C. Upon the report of alleged abuse and/or neglect, law enforcement shall immediately notify and coordinate with the Department throughout the investigation.
- D. When conflicts of jurisdictional issues occur, the law enforcement officer will notify the Department by telephone and follow up with a copy of the report.
- E. Determination of priority for action shall be a joint decision of the responsible agencies and/or investigators through the exercise of their professional judgment.
 - (1) Response is determined by the apparent potential risk of harm to the child. Priority assessments will be determined on a case-by-case basis.
 - (2) The law enforcement officer can request the assistance of the Department.
 - (3) Law enforcement will assist as appropriate and as availability allows in situations where the child/children is/are in no immediate danger or where child safety is assured.
- F. If, upon investigation, law enforcement determines that a crime also has concurrent federal jurisdiction, they shall contact the Federal Bureau of Investigation. If law enforcement officials determine that criminal action has occurred, they shall refer the case to the Prosecutor for prosecution.
- G. Administrative rules and policies shall be promulgated to carry out the objectives and provisions of this chapter and the responsibilities of law enforcement.

§ 278-8 Prosecutor; responsibilities and duties.

The Prosecutor shall:

- A. Represent the Menominee Tribe in all proceedings under this chapter.
- B. Diligently work to promptly review referrals/cases with the health of the family in mind.
- C. Work with the Department and law enforcement.
- D. Consult with the Department when proceedings are initiated pursuant to Child in Need of Protection and Services proceedings of this chapter, herein, to ensure that the best interests of the child are served.
- E. When proceedings are initiated pursuant to Child in Need of Protection and Services, Juvenile in Need of Protection and Services, or Delinquency Proceedings of this chapter, the Prosecutor shall consider and dispose of the proceeding in a way that restores balance to the child, their family, and his/her surroundings.

- F. Administrative rules and policies shall be promulgated to carry out the objectives and provisions of this chapter and the responsibility of the Prosecutor.
- G. Maintain a case record system; include in annual report aggregate numbers, including declinations, dismissals, etc.
- H. Submit, at a minimum, two reports each fiscal year to the Tribal Chairperson that minimally includes aggregate case numbers, service referrals, Court referrals, declinations, and dismissals.

§ 278-9 Guardian ad litem and other appointed persons.

- A. The Court shall establish by rule the appointment guidelines, qualifications, and compensation for guardians ad litem, defense counsel, special advocates or other appointed persons.
- B. The Court may appoint defense counsel, guardians ad litem or other counsel at its own discretion when it determines it is in the best interest of the child.
- C. The Court may appoint a special advocate under a Court-approved special advocate program to promote the best interest of the child. Such an advocate does not become party to the proceedings and may not make motions or call or cross-examine witnesses. Any designation of special advocate terminates when the jurisdiction of the Court over the child terminates unless the special advocate is discharged by Court order sooner.
- D. If parent(s) are not already represented, the Court shall appoint counsel to parent(s) of a child who will be permanently removed from the parent(s) home, when the Court becomes aware that the child will be permanently removed from the parent(s) home in termination of parental rights, suspension of parental rights and permanent guardianship proceedings.
- E. The Court shall appoint counsel to a child in all matters where the child is the petitioning party.

§ 278-10 Appeals.

A. Right to appeal.

- (1) Any party to any proceedings conducted pursuant to the provisions of this title may appeal from:
 - (a) Any final order of the Court, including, but not limited to, all disposition orders; and a finding that the child committed a delinquent act, is a child in need of protection and services or a juvenile in need of protection and services; or
 - (b) Any final order of the Court for guardianship where the Tribe is not a petitioning party to the proceeding; or
 - (c) Any final order of the Court of involuntary suspension or termination of parental rights.
- (2) The Tribe shall not be permitted to appeal an order dismissing a delinquency petition where the delinquency petition was not proved beyond a reasonable doubt.

B. Rules in appellate proceedings.

- (1) Appeals from the Court shall be conducted in accordance with the appellate rules governing appeals from the Court, to the extent that:
 - (a) Such rules are not in conflict with the provisions of this chapter;
 - (b) The time limits imposed by such rules, when applied in conjunction with the provisions of this chapter, do not unduly burden the right to appeal.

- C. Time limit for appeal. Written notice of the appeal shall be filed within 14 business days after the signing and filing of the written final order and findings of the Court.
- D. Record of proceedings.
 - (1) Within three business days of the filing of the notice of appeal, a record of the proceedings, excluding a transcript, shall be made available to the child, the child's parent, guardian or caretaker, and counsel for the child.
 - (2) The transcript of the proceeding(s) shall be provided by the Court and the costs of any transcription services shall be payable by the party seeking the appeal according to the rules established by the Court.
- E. Stay on appeal. The Court shall stay any order from which a party has filed written notice of appeal, unless the Court finds, after consideration of any reasonable alternatives, that enforcement of the order is necessary to avert a substantial risk to the health, welfare, person, or property of the child or others.

§ 278-11 Court records; inspection.

A. Court records.

- (1) A record of all hearings under this chapter shall be made and preserved.
- (2) All Court records included within this section shall be kept in a secure place and shall be released only pursuant to procedures developed by the Chief Justice of the Court. No other release of information shall be permitted without an order of the Court.
- (3) All records of the child shall be sealed and, excepting adoption records, may be destroyed by order of the Court absent good cause not to do so. The Court shall notify the Department of its intent to destroy records, and the Department shall notify the Court of its objections, if any.
- (4) All records and files pertaining to any proceedings conducted pursuant to the provisions of this chapter, including, but not limited to, law enforcement records and Court files, shall be expunged when the child reaches 25 years of age.
- (5) No further inspection or use of any record or file to be expunged shall be permitted.

B. Confidentiality of records. All Court records, files, documents, and other related information associated with a proceeding under this chapter, including, but not limited to: the acknowledgment that a case is before the Court; the release of any identifying information (i.e., the names of children, families, or witnesses involved in proceedings); and the substance of the hearing, order, or Court file, are confidential and are not accessible for public inspection except as follows:

- (1) By a law enforcement agency or the Department for the purpose of subsequent investigation of child abuse or neglect;
- (2) By Court personnel;
- (3) By Court-approved persons who have been allowed by the Court to intervene and have been granted certain rights;
- (4) By prior specific judicial authorization;
- (5) By judicial order; or
- (6) As specifically authorized by other provisions contained in this chapter.

- C. Social, medical, dental psychiatric and psychological, or other profession examination records of the Court concerning a child and produced or recorded by requirement or authority contained in this chapter, including reports of preliminary inquiries, predisposition studies shall be open to inspection only by the following:
- (1) The judge, the Department, Prosecutor, guardian ad litem, defense counsel, and Court personnel;
 - (2) Representatives of any agency providing supervision and/or having legal custody of the child;
 - (3) Any other person, by order of the Court, having a legitimate interest in the particular case or the work of the Court.
- D. All or any part of records or information secured from records listed in Subsection C or all reports or other documents filed or when presented to the Court in a proceeding under this chapter shall be made available to the parties to the proceedings and their counsel unless the records are privileged or the records contain statements given under promise of confidentiality as required by law or contain material which is necessary to protect the interest of the child.
- (1) The parties shall have a right to timely examine these records.
 - (2) The Court may refuse to disclose the identity of informants only after finding that such disclosure will place the informant in danger or that disclosure would not be in the child's best interests.
 - (3) The Court may require counsel or parties not to disclose material contained in the records to any person if the Court reasonably believes such disclosure would be harmful to the child.
 - (4) If release is required by federal law, the records shall be released.
- E. If records are not released to a requesting party, the reason shall be given to the party, who may ask the Court to review the denial of the request, in which case the Court may view the records in camera in order to decide whether to order the records be open to inspection.
- F. Closed Courtroom. Hearings and proceedings under this chapter shall be private and closed. Only those persons the Court determines to have a legitimate interest in the proceedings may be present.
- G. Contempt of Court. No Court records or other confidential information shall be viewed or disseminated except as provided herein. Any person who receives or views documents or other information pursuant to this provision shall maintain the confidentiality of such information. Failure to abide by this restriction shall constitute contempt of Court.
- H. Notice by publication. In accordance with this section, when providing service by publication, the names of the children in the matter shall not be disclosed. Only the child's initials shall be published.
- I. This section does not apply to the confidential exchange of information between law enforcement, the Department, Prosecutor's office, another social service agency, a health care provider, public or private school regarding a person in the care or custody of the Department.
- (1) The Department or other social service agency shall keep the information confidential as required by applicable law, administrative rule, policy or procedure.
 - (2) Law enforcement that obtains information pursuant to this chapter shall keep the information confidential as required by applicable law, administrative rule, policy or procedure.
 - (3) Health-care provider that obtains information pursuant to this chapter shall keep the information confidential as required by applicable law, administrative rule, policy or procedure.

(4) Tribal, public, and private schools that obtain information pursuant to this chapter shall keep the information confidential as required by applicable law, administrative rule, policy or procedure.

J. This section does not prohibit:

- (1) The Department or Tribe from entering the content of any record kept or information received by the Department or licensed child welfare agency into a child welfare information system or the Department from transferring any information maintained in that system to the Court
- (2) The Department from disclosing information to a relative of a child placed outside of his or her home only to the extent necessary to facilitate the establishment of a relationship between the child and the relative or a placement of the child with the relative or other placement preference.
- (3) The disclosing information to any public or private agency that is investigating a person for purposes of licensing the person to operate a foster home, placing a child for adoption in the home of the persons, or being credentialed in a field requiring that the person has not been adjudicated to have abused, neglected, or maltreated a child.

§ 278-12 Court costs and expenses.

- A. If, after due notice to the parent(s) or other person(s) legally obligated to care for and support the child, and after a hearing, the Court finds that such person(s) is financially able to pay all or part of the Court costs, fees and expenses of this chapter, the Court shall order them to pay the costs and expenses and may prescribe the manner of payment.
- B. Whenever custody of a child in need of protection and services or a juvenile in need of protection and services is vested in someone other than the child's parent(s), the Court, after notice to the parent(s) or other person(s) legally obligated to support the child and after a hearing and a finding that they are financially able to afford all or part of the costs and expenses of the support and treatment, may order such parent(s) or other legally obligated person(s) to pay to the Court for remittance to the custodian in the matter a reasonable sum that will cover all or part of the expenses of the support and treatment of the child.
- C. If the parent or other legally obligated person willfully fails or refuses to pay the sum ordered, the Court may proceed with contempt charges. An order for payment may be filed and, if filed, shall have the effect of a civil judgment.

§ 278-13 Notice to interested parties for non-Menominee Indian child.

- A. In any involuntary proceeding involving the out-of-home care placement of, suspension or termination of parental rights to, or delegation of powers regarding, a child whom the Court knows or has reason to know is an Indian child other than a Menominee child, the party seeking the out-of-home care placement, termination of parental rights, or delegation of powers shall, for the first hearing of the proceeding, notify the Indian child's parent, Indian custodian, and Tribe, by registered mail, return receipt requested, of the pending proceeding and of their right to intervene in the proceeding and shall file the return receipt with the Court.
- B. Notice of subsequent hearings in a proceeding shall be in writing and may be given by mail, personal delivery, or facsimile transmission, but not by electronic mail by the Court.
- C. If the identity or location of the Indian child's parent, Indian custodian, or Tribe cannot be determined, that notice shall be given to the U.S. Secretary of the Interior in like manner. The first hearing in the proceeding may not be held until at least 10 days after receipt of the notice by the parent, Indian custodian, and Tribe or until at least 15 days after receipt of the notice by the U.S. Secretary of the Interior.

- D. On request of the parent, Indian custodian, or Tribe, the Court shall grant a continuance of up to 20 additional days to enable the requester to prepare for that hearing.
- E. In emergency removals and/or where the child is in protective custody, the Department shall attempt to the best of their ability to provide notice of hearing and removal and relevant documentation to the Indian Child's tribe, but it shall not be required.

§ 278-14 Due process rights.

- A. In all proceedings conducted pursuant to the provisions of this chapter, the parties shall have the right to due process, including:
 - (1) The right to adequate notice of all proceedings, and the opportunity to be heard before an unbiased finder of fact; adequate notice shall be the notice required for the proceeding occurring pursuant to this chapter;
 - (2) The right to discovery;
 - (3) The right to testify, the right to subpoena witnesses, and the right to introduce evidence on the party's own behalf;
 - (4) The right to cross-examine witnesses, except in such cases as the provisions of this title expressly permit the use of hearsay testimony; and
 - (5) The right to findings which are based solely upon evidence properly admitted in hearings before the Court.

§ 278-15 Privilege against self-incrimination.

- A. Every child coming within jurisdiction of the Court shall be accorded and advised of the privilege against self-incrimination, and the child's exercise of the privilege shall not be used against the child in any proceedings conducted pursuant to the provisions of this chapter.
- B. No statement, admission or confession made by, nor incriminating information obtained from, a child in the course of any screening, assessment, evaluation, or treatment undertaken in conjunction with proceedings under this chapter, including, but not limited to, that which is Court-ordered, shall be admitted into evidence in any proceedings before the Court.

§ 278-16 Fingerprinting and photographs.

- A. A child shall not be fingerprinted or photographed, nor have any tissue sample taken, for purposes of identification in connection with any matter coming within the provisions of this chapter, except by written order of the Court.
- B. Fingerprints, photographs or tissue samples taken pursuant to a written order of the Court shall be used only as specified in the written order.

§ 278-17 Medical examinations.

- A. After the filing of a petition, any party may file a motion, including the Court on its own motion, requesting a physical, psychological, mental, or developmental examination or an alcohol and other drug abuse assessment.
- B. The Court may order an examination upon the Court finding that reasonable cause exists to warrant such an examination.
- C. The Court may order any child coming within its jurisdiction to be examined as an outpatient by personnel in an approved treatment facility for alcohol and other drug abuse, by a physician, psychiatrist

or licensed psychologist, or by another expert appointed by the Court holding at least a master's degree in social work or another related field of child development, in order that the child's physical, psychological, alcohol or other drug dependency, mental, or developmental condition may be considered.

D. The cost of the examination will be borne by the moving party through its own resources.

§ 278-18 Parental responsibilities.

A. Parental responsibilities.

(1) The parent, guardian or caretaker of any child coming within the jurisdiction of the Court under the provisions of this chapter shall have the following responsibilities:

- (a) To attend all Court hearings involving the child, or to show cause before the Court why they should be excused from any hearing they are unable to attend;
- (b) To bring the child before the Court when so ordered; and
- (c) To monitor the child's compliance with all orders entered or conditions imposed by the Court, and to make all reasonable efforts to ensure that the child complies with such orders or conditions.

(2) Where the parental responsibility imposed conflicts with the work schedule of the child's parent, guardian, or caretaker, or would otherwise cause undue hardship for the child's parent, guardian, caretaker or family, the Court:

- (a) Shall, whenever possible, permit the child's parent, guardian or caretaker to attend the hearing by phone, video conferencing technology, or similar means; and
- (b) May consider the availability and practicability of such alternatives in determining whether the child's parent, guardian or caretaker should be excused from attending the hearing.

B. Excuse from parental responsibilities.

- (1) The child's parent shall be excused from the responsibilities under the parental responsibilities section if the child is under the care and control of a guardian or caretaker as the result of a Court order.
- (2) The child's parent, guardian or caretaker may be excused from the parental responsibilities imposed if it appears to the Court that there may be a conflict of interest between the child and the child's parent, guardian or caretaker.
- (3) A showing that the child's parent, guardian or caretaker has voluntarily transferred physical custody of the child to another person shall not excuse the child's parent, guardian or caretakers from the responsibilities imposed under the parental responsibilities section.

C. Parental noncompliance. Any parent, guardian or caretaker who fails to comply with the requirements of parental responsibility may be ordered to appear before the Court to show cause why they should not be held in contempt.

§ 278-19 General procedure.

A. Scheduling. All hearings conducted pursuant to the provisions of this chapter shall be scheduled, to the extent possible:

- (1) On a calendar or in a location separate from other hearings before the Court;
- (2) So as to assign the highest priority to cases in which the child is detained in a secure juvenile detention

facility;

- (3) So as to accommodate the work schedule of the child's parent, guardian or caretaker; and
- (4) Outside of school hours if specifically requested.

B. Standards of proof.

- (1) In an adjudicatory hearing for Child in Need of Protection or Services and Juvenile in Need of Protection or Services, the standard of proof shall be clear and convincing evidence.
- (2) In a hearing to appoint a legal guardian or approve an adoption, the standard of proof shall be clear and convincing evidence.
- (3) In a hearing in which a parent, guardian, or caretaker seeks return of a child from a legal guardianship or permanent foster care, the standard of proof shall be clear and convincing evidence.
- (4) In a hearing to determine whether a person is in contempt of Court, the standard of proof shall be clear and convincing evidence.
- (5) In a hearing to revoke consent or release and surrender for adoption, the standard of proof shall be clear and convincing evidence.
- (6) In a hearing to suspend or terminate parental rights, the standard of proof shall be beyond a reasonable doubt.
- (7) In a hearing to determine whether to accept a transfer of jurisdiction, the standard of proof shall be clear and convincing evidence.
- (8) In all other hearings, the standard of proof shall be a preponderance of the evidence, unless stated otherwise in this chapter.

C. Consolidation. Proceedings involving two or more children may be consolidated when the factual basis for jurisdiction is the same or similar, or for the convenience of all parties. Separate dispositional and review hearings may be held, if it is reasonable to do so.

D. Grounds for supplemental petition. Once a child or juvenile has been found to be in need of protection or services, and placed in the legal custody of the Department, the Prosecutor may subsequently file a supplemental petition alleging new charges based on current circumstances, which, if true, will substantially change the nature of case planning. If the alleged changes are serious, the parent under a Child In Need of Protection and Services petition or juvenile under a Juvenile In Need of Protection and Services shall have a due process right to an evidentiary hearing on the new allegations. In such cases, all requirements shall be followed as though an original petition is being filed.

E. Testimony of child. The Court, upon its own motion, or upon motion of any party, may take testimony from any child appearing as a witness and may exclude the child's parent(s) and other persons if the Court finds such action would be likely to be in the best interests of the child.

§ 278-20 Continuance, days, extensions, and computing time.

A. The following time periods are excluded in computing periods under this chapter:

- (1) Any period of delay resulting from other legal actions concerning the child or unborn child and the unborn child's expectant mother, physical, psychological, mental, developmental assessment or hearing relating to mental condition, prehearing motions, waiver motions and hearings on other necessary matters.

- (2) Any period of delay resulting from the continuance granted at the request of or with the consent of the child, the child or unborn child's counsel or guardian ad litem.
 - (3) Any period of delay resulting from a continuance granted at the request of the Prosecutor, if the continuance is granted because of the unavailability of evidence material to the case when he or she has exercised due diligence to obtain the evidence and there are reasonable grounds to believe that the evidence will be available at a later date, or to allow additional time to prepare the case and additional time is justified because of exceptional circumstances of the case.
 - (4) Any period of delay resulting in the disqualification of the judge.
 - (5) Any period of delay resulting from the imposition of a consent decree.
 - (6) Any period of delay resulting from the absence or unavailability of the child or expectant mother, including as a result the child or child expectant mother having run away.
 - (7) A reasonable period of delay, not to exceed 20 days, in a proceeding involving out-of-home care placement or suspension or termination of parental rights to a child whom the Court knows or has reason to know is a non-Menominee Indian child, resulting from a request for the child's parent, Indian custodian, or tribe to enable the requester to prepare for the proceedings.
- B. Continuances, delays, or extensions may be granted for good cause and only for so long as necessary, taking into account the request or consent of the parties and the public interest in the prompt disposition of cases. Court calendar and attorney scheduling conflicts may constitute good cause.
- C. Court may grant sua sponte ("on its own motion") adjournment.
- D. Provisions for continuances apply to extension of orders but:
- (1) Petition for extension must be on file before expiration or order; and
 - (2) Court may not grant an extension after the expiration of a disposition order, but the Court may schedule an extension hearing if the extension request was filed before the termination of the order but the hearing could not be scheduled before that date. Such hearing must be scheduled within 20 days of the termination date of the disposition order.
- E. Continuances, delays or extensions must:
- (1) Cite to the code on the record;
 - (2) State basis for concluding good cause exists to continue, delay, or extend hearing date;
 - (3) Find the hearing is not delayed longer than necessary.
- F. Failure by the Court or a party to act within any time period specified in this chapter does not deprive the Court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction.
- (1) Failure to object to a period of delay or a continuance waives any challenge to the Court's competency to act during the period of delay or continuance.
 - (2) If the Court or a party does not act within a time period specified in this chapter, the Court, while ensuring the safety of the child, may:
 - (a) Grant a continuance under this section; and/or

- (b) Release the child from custody or terms of custody order; or
 - (c) Dismiss the proceeding without prejudice; or
 - (d) Grant any other relief that the Court considers appropriate.
- G. No continuance or extension may be granted, and no period of delay may be excluded in computing time requirement if the continuance, delay, or extension would result in any of the following:
- (1) The Court making the initial necessary removal and welfare findings beyond 60 days from the date the child was removed from the home.
 - (2) The Court making the initial permanence findings more than 12 months from the date the child was removed from the home or making any subsequent permanence findings more than 12 months from the previous permanence findings.
- H. Counting.
- (1) Days.
 - (a) Unless otherwise designated, days mention in this chapter shall be considered calendar days.
 - (b) Calendar days include weekends, legal holidays and Court closings. Except in computing calendar days, in any period that would otherwise end on a Saturday, Sunday, legal holiday or Court closing will be deemed to end on the next day that the Court is open and is not a Saturday, Sunday, or legal holiday.
 - (c) Business days do not include Saturday, Sunday, legal holidays, or Court closings.
 - (2) Hours. Unless otherwise designated, computing hours includes Saturday, Sunday, legal holidays, and Court closings.
 - (3) Holidays. Any reference to holidays includes legal holidays of the Tribe and Court closings.

§ 278-21 Service.

A. Hearing notices.

- (1) Hearing notices on the petition shall be sent to the child's parent(s), the Department, the legal custodian(s) and the caretaker(s) of the child.
- (2) Hearing notices sent by certified mail to the parents shall be sufficient verification that the notice is deemed complete.
- (3) For a final hearing on the petition, the hearing notice sent by certified mail to the parents shall be sufficient verification that the notice is deemed complete. Upon a proper showing by the petitioner that reasonable efforts were made to notify the parents of the final hearing, the final hearing may proceed and if failing to do so shall not be continued more than once.
- (4) Service by publication shall follow the Menominee Tribal Court Rules of Civil Procedure unless otherwise specified in this chapter.

B. Waiver of service.

- (1) Service may be waived by any person by written stipulation or by voluntary appearance before the Court.

- (2) The child may waive service only if the child has consulted with counsel and the Court, after personally addressing the child and counsel for the child, finds such waiver to be knowing, voluntary, and in the child's best interests.
- C. Final orders and decrees. The Court shall make all reasonable efforts to ensure that the interested parties receive notice of the final decree or Court order.

§ 278-22 Failure to appear; investigation and recommendation.

A. In all proceedings conducted pursuant to the provisions of this chapter, if the child or the child's parent, guardian or caretaker fails to appear before the Court after being so ordered, the Department shall:

- (1) Promptly investigate the reasons for the failure to appear;
- (2) Where appropriate, provide the child and the child's parent, guardian or caretaker with information and referrals to social, community, or tribal services or resources which may be appropriate for addressing factors contributing to the failure to appear; and
- (3) Make appropriate recommendations to the Court, in keeping with the provisions of this chapter.

§ 278-23 Placement preferences.

A. Any child placed under this chapter shall be placed in the least restrictive setting which most approximates a family and in which the special needs, if any, may be met.

B. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child.

C. In any placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with:

- (1) A member of the Indian child's extended family;
- (2) A foster home licensed, approved, or specified by the Indian child's tribe;
- (3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority;
- (4) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

D. For the purposes of adoption or guardianship, the order of preference shall be:

- (1) A member of the Indian child's extended family;
- (2) Other members of the Indian child's tribe; or
- (3) Other Indian families.

E. If any party asserts that good cause not to follow the placement preferences exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child-custody proceeding and the Court.

F. The party seeking departure from the placement preferences should bear the burden of proving by clear and convincing evidence that there is "good cause" to depart from the placement preferences.

G. A Court's determination of good cause to depart from the placement preferences must be made on the record or in writing and should be based on one or more of the following considerations:

- (1) The request of one or both of the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference;
- (2) The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;
- (3) The presence of a sibling attachment that can be maintained only through a particular placement;
- (4) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live;
- (5) The unavailability of a suitable placement after a determination by the Court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located.

§ 278-24 Limitations on physical restraints.

A. Handcuffs, shackles, straitjackets, or similar restraints shall not be used on a child during any Court proceedings and must be removed prior to the child being brought into the Courtroom, unless the Court finds that:

- (1) No less restrictive alternatives, such as the presence of law enforcement officers, bailiffs or other Court personnel, will suffice; and
- (2) Such restraints are necessary to avert a substantial risk to the health, welfare, person or property of the child or others or because there is a substantial risk that the child may flee from the Courtroom.

B. Prior to authorizing the use of restraints, the Court shall provide the child an opportunity to be heard through counsel.

C. Upon authorizing the use of restraints, the Court shall enter written findings of fact in support of its decision.

D. If the Court finds that restraints are necessary only because there is a substantial risk that the child may flee from the Courtroom, the Court may only authorize the use of leg restraints.

E. Any restraints authorized by the Court shall allow the child sufficient movement of his or her hands to read and handle documents and writings necessary for the hearing.

F. Under no circumstances shall a child be restrained to a stationary object or another person.

§ 278-25 Trauma-informed practices.

A. The Court shall:

- (1) Require all Court staff and practitioners before the Court to receive training regarding the effects of trauma on children and their families;
- (2) Presume that all children, families and staff coming within the provisions of this chapter have been impacted by trauma;
- (3) Strive to maintain a calm, secure and safe Court environment for children and their families, witnesses, attorneys, Court staff, and others appearing before or coming into contact with the Court;
- (4) Afford dignity and respect to all individuals appearing before or coming into contact with the Court; and
- (5) Meet annually to evaluate its trauma-informed response and training.

B. The department shall:

- (1) Require all Department staff and practitioners working with the Department to receive training regarding the effects of trauma on children and their families;
- (2) Presume that all children, families and staff coming within the provisions of this chapter have been impacted by trauma;
- (3) Strive to maintain a calm, secure and safe environment for children and their families, witnesses, attorneys, staff, and others working with the Department;
- (4) Afford dignity and respect to all individuals appearing before or coming into contact with the Department; and
- (5) Meet annually to evaluate its trauma-informed response and training.

§ 278-26 Netāēnawemākanak services ("all my relatives/family").

- A. Provides a comprehensive, strength-based, youth- and family-driven way of responding when children, youth, and families experience challenges. The goal of Netāēnawemākanak services is to ensure families re-assume primary responsibility, with guidance from the Department, in regard to children's safety and well-being to eliminate the need for Court intervention.
- B. Places the child or youth and family at the center of services and support. The family's needs drive all of the work with support from a team of professionals and natural supports.
- C. The young person and their family members work with a facilitator to build their team, which can include the family's friends, people from the wider community, and service providers.
- D. Families and their team members work together to put the plan into action, monitor how well it is working, and change it as needed.
- E. Designed to address crisis concerns and keep an individual child or adult in their home and community.
- F. While referrals are intended to eliminate the need for Court intervention, referrals do not prevent any mandatory or discretionary action under this chapter. Referrals do not preclude removal if reasonable grounds exist to believe that the child is a child in need of protection and services and removal is necessary. These referrals and family engagement are voluntary unless they are ordered by the Court. For children, juveniles, and families working under an informal disposition or consent decree, the referral is still voluntary but failing to work with Netāēnawemākanak may result in the termination of the informal disposition or consent decree and lead to Court-ordered services.
- G. The Department is required to refer every reported and substantiated case of child abuse, neglect or substantiated cases where the child is determined to need protection and services to Netāēnawemākanak services.
- H. The Department may refer families to Netāēnawemākanak services for:
 - (1) Any allegation that is not assigned a preliminary assessment;
 - (2) Cases involving family disputes or neglect where the child has not been removed from the home; or
 - (3) Any other situation where the Department determines a referral is in the best interest of the family.
- I. Concerned family members and professionals and other Tribal Departments may refer any matter concerning a child's welfare or well-being to Netāēnawemākanak services.

J. A Court may refer a matter to Netānawemākanak services at any time after a petition is filed.

§ 278-27 Voluntary placement agreement.

- A. A parent can have his/her child placed voluntarily out-of-home by making such a request to the Department.
- B. Such placement shall be by written agreement between the Department, the parent(s) and any proposed temporary placement. The agreement shall be filed with the Court for docketing and recognition.
- C. The voluntary placement agreement shall specify at a minimum the legal status of the child and the rights and obligations of the parent(s) and/or guardian(s), the child and the Department while the child is in placement. Such status and obligations are as follows:
- (1) The child is in the temporary custody of the Department and the parent(s) has authorized the Department to obtain any needed emergency medical care or make decisions on other basic needs for the child, and temporary placement with a party proposed by the parent(s) or determined by the Department;
 - (2) The parent is agreeing to have the Department take this temporary custody and provide placement while the parent(s) is addressing any outstanding issues which could affect the safety and well-being of the child;
 - (3) A statement that the parent(s) can revoke the voluntary agreement and have his/her child returned to him/her any time before involuntary CHIPS any time prior to; and
 - (4) The parent(s) and/or guardian(s) are required to enter into a case management plan that works towards reunification with the child.
- D. The agreement shall be in effect for up to 180 days. A hearing shall be held on the status of the voluntary out-of-home placement by the 180th day. The Prosecutor can vacate the hearing if the child returns to the parent(s).
- (1) A judicial determination shall be made that the continued out-of-home placement is in the child's best interest and that reasonable efforts to prevent removal were made or are not required by the 179th day the child is voluntarily placed out-of-home.
 - (2) Upon this initial determination, the case shall be referred to the Prosecutor to proceed with filing a petition pursuant to this chapter.
- E. Voluntary placement agreements may not be used to avoid child protection concerns or used if allegations that could lead to a CHIPS petition have been substantiated or the child was taken into custody by law enforcement or the Department.

§ 278-28 Parental power of attorney.

- A. A parent who has legal custody of a child, by a power of attorney that is properly executed by all parents who have legal custody of the child, may delegate to another person/agent powers of a parent regarding the care, custody, and property of a child.
- B. A parent may not use a parental power of attorney:
- (1) To prevent or supersede any agency or department from receiving and investigating a report of neglect or abuse under this chapter, prevent a child from being taken into custody under this chapter, or prevent a Court from exercising jurisdiction over the child under this chapter.

- (2) If there is an active CHIPS, JIPS, or Delinquency proceeding unless it is approved by the Court.
 - (3) To place the child in a foster home, group home, shelter care facility, or inpatient treatment facility.
- C. Delegable powers include, but are not limited to, the following:
- (1) Consent to admission to a hospital or school.
 - (2) Consent to secure routine dental care, nonsurgical medical care, and emergency dental, medical or surgical treatment.
- D. Delegable power does not include the power to:
- (1) Consent to marriage.
 - (2) Nonemergency elective surgery.
 - (3) Adoption.
 - (4) Termination of parental rights to the child.
 - (5) Enlistment of the child in the U.S. armed forces.
- E. The parental power delegation shall be valid for six/12 months from the date of execution and may be revoked, in writing, at any time by the person or agency delegating the power.
- (1) The delegation is renewable upon the re-executive of the document except as described below.
 - (2) A delegation made to a relative of the child or a nonrelative if that petition that has been approved by the Court. Consent may be made by telephone if the Court finds it is in the best interest of the child to do so.
- F. A delegation of powers under this section does not deprive the parent of any of his or her powers regarding the care and custody of the child.
- G. A person acting under a power of attorney may be referred to as an "attorney in fact," "agent" or "power of attorney."
- H. Notwithstanding any other provision of this Section, a delegation for the purposes listed in subsection C(1) related to hospital admissions, or any delegation for the purposes listed in C(2) above may be made in any form acceptable to the provider of such services and the duration restrictions stated in subsection E above are not applicable to such a delegation.

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