

CHAPTER 4 Juvenile Code Revisited

§ 401. Purpose of the Code. [History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #02-20.1147, as enacted by Tribal Council in Special Session on August 28, 2002; and by Tribal Council motion, enacted December 20, 2017.]

The Grand Traverse Band of Ottawa and Chippewa Indians, referred to in this Code as "the Tribe," has determined that children are the Tribe's most valuable resource, and that the welfare of Tribal children is a vital concern of the Tribe;

- (a) It is essential that Tribal resources, identity, and culture be preserved by providing for enhancement and strengthening of the family as the primary means of securing a vital Tribal community;
- (b) The best interests of the Tribe and its children are served when the children of the Tribe receive the care and guidance necessary for their spiritual, emotional, mental, and physical development; all of which will prepare them to become contributing members of the Tribe;
- (c) When problems involving Tribal children arise, the Tribal Court, with advice from Anishinaabek Family Services on neglect and abuse cases and the Tribal juvenile justice officer and/or the juvenile probation officer on juvenile offender matters, is best able to resolve the problems and provide Tribal children with the care and guidance that is necessary for their well-being;
- (d) Tribal Court, whenever practical, is preferable to state court for consideration of matters involving Tribal children;
- (e) When problems involving Tribal children arise and the Court must make a placement outside of the home, the best interests of the Tribe and its children are served by providing for their care and placement in an environment which will ensure that Tribal children receive the care and guidance necessary for their spiritual, emotional, mental, and physical development; and
- (f) When problems involving Tribal children arise, the best interests of the community are served if Tribal Court has jurisdiction over all persons in the family or household who are a part of the problem, and/or the solution.

§ 402. Definitions. [History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999; and by Tribal Council motion, enacted December 20, 2017.]

- (a) For purposes of this Code, the following definitions shall apply:
 - (1) Adult - A person 18 years of age or older.
 - (2) Advocate - A lay person permitted to represent a juvenile offender by the Tribal Court who has received training provided by the Tribal Court.
 - (3) Complaint - A formal or informal report to the prosecuting attorney containing

allegations indicating that a juvenile under the jurisdiction of the Tribal Court has committed a delinquent act.

- (4) Counsel - An attorney licensed by any state to practice law and admitted to practice in Tribal Court who, as an officer of the Court, provides legal assistance to any party during the course of any proceeding under this Code.
- (5) Custodian - One who has physical custody of a juvenile and is providing food, shelter, and supervision to that juvenile.
- (6) Delinquent Act - Any act or omission by a juvenile that is:
 - (A) A violation of the Grand Traverse Band Criminal Code;
 - (B) A failure to follow the lawful commands of parent(s), guardians, custodians, teachers, and administrators;
 - (C) Truancy as defined by the school in which the juvenile is enrolled or should lawfully be enrolled; or
- (7) Detention - The placement of a juvenile in a physically restrictive facility.
- (8) Guardian - A person other than the juvenile's parent, appointed by a court of competent jurisdiction, who is legally responsible for that juvenile.
- (9) Juvenile - A person under 18 years of age. The prosecutor shall have the discretion to charge any juvenile who is 17 years of age as an adult.
- (10) Juvenile Offender - A person who commits a delinquent act prior to his or her eighteenth birthday.
- (11) Least Restrictive Alternative - Restrictions placed on the juvenile must be reasonably related to the Court's objective of correcting the delinquent behavior, and must be the least intrusive manner of achieving that objective.
- (12) Notice - The method by which the Court informs the parties, counsel, and others of the time, and place of proceedings to be conducted by the Court.
- (13) Petition - The instrument, which commences proceedings in the Court.
- (14) Summons - The instrument with which the Court directs a party to appear before the Court.
- (15) Tribal Land - Land held in trust for the benefit of the Tribe by the United States; any land in which the Tribe has a beneficial ownership interest, and all lands designated as Indian Country in 18 U.S.C. 1151.

§ 403. Jurisdiction and Court Authority. [History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #08-26.1987, enacted by Tribal Council on December 17, 2008;; and by Tribal Council motion, enacted December 20, 2017.]

- (a) **Statement of Jurisdiction.** The Tribal Court shall have jurisdiction over juvenile offender proceedings, if the juvenile is:
 - (1) A member of the Tribe and
 - (A) The alleged offense occurred on Tribal land; or
 - (B) The juvenile's primary residence is on Tribal lands and the juvenile commits an offense while on a Tribally sponsored trip off Tribal lands; or
 - (C) Unless and until the Court transfers jurisdiction to the Adult Division of the Court, pursuant to § 414 of this Code; or
 - (2) Not eligible for membership in the Tribe but whose primary residence is on Tribal land and the alleged offense occurred on Tribal land or on a Tribally sponsored trip off Tribal land.
- (b) **Transfers From State Courts.** The Tribal Court may accept transfers of cases from state courts if the alleged juvenile offender is a Tribal member and resides on Tribal lands.
- (c) **Transfers To State Courts.** Upon the request of a parent or guardian, the Tribal Court may transfer a case to a state court if the alleged offense occurred on Tribal land, the alleged juvenile offender is a member of the Tribe or is eligible for Tribal membership, and the state court is willing to accept transfer.
- (d) **Community Problem.** The Tribal Court shall have jurisdiction over all members of the family or household who are a part of the problem or who may be a part of the solution to the problem.
- (e) **Adjudication Classification.** No adjudication of the status of any child under the jurisdiction of the Court shall be deemed criminal, unless the Court refers the matter to the Adult Division of Court.
- (f) **Closed Proceedings.** Juvenile proceedings shall be closed to the general public to protect the privacy interests of the parties. Disposition of any juvenile proceeding, and evidence presented at such proceedings, shall not be admissible as evidence against the child in any other proceeding heard by another division of the Tribal Court system, except when the evidence is discovered by independent means.
- (g) **Authority to Cooperate.** The Court is authorized to cooperate with any court or federal, state, tribal, public, or private agency; to participate in any diversion, rehabilitation, training programs, or other service programs; and to receive grants-in-aid to carry out the purposes of this code and may order any such non-tribal agency to be included in as interested parties in proceedings under this code.
- (h) **Least Restrictive Alternative.** The least restrictive alternative applies to all disposition actions taken by the Court under this Code.
- (i) **Court Records.**
 - (1) A record of all hearings under this Code shall be made and preserved.

- (2) All Court records shall be confidential, and shall only be open to inspection by the following:
 - (A) The juvenile or his legal representative or advocate;
 - (B) The juvenile's parent(s), guardian, custodians, or their legal representatives or advocates.
 - (C) The Prosecuting Attorney.
 - (D) The Tribal Youth Intervention Specialist.
 - (E) Under 402(a)(6)(C), the Prosecuting Attorney and/or the Tribal Youth Intervention Specialist (or the designee of either) may coordinate with the school in which the juvenile is enrolled or should be enrolled and share information contained in court records sufficient to permit that school to provide intervention or services to the juvenile.
 - (F) A non-tribal agency pursuant to order of the court.
- (j) Law Enforcement Records.
 - (1) Law enforcement records and files concerning juveniles shall be kept separate from records and files of adults.
 - (2) All law enforcement records and files shall be confidential, and shall only be open to inspection by the following:
 - (A) The juvenile or his legal representative or advocate;
 - (B) The juvenile's parent(s), guardian, custodian, or their legal representative or advocate;
 - (C) The Tribal Prosecutor, who in actions under 402(a)(6)(C), may coordinate with law enforcement local to the school in which the juvenile is or should be enrolled to permit an investigation into a complaint against the juvenile's parent(s), guardian, or custodian, provided that such information disclosed shall not be used to prosecute the juvenile for any offense unless gathered independently;
 - (D) The Tribal Juvenile Justice Officer;
 - (E) The Tribal Youth Intervention Specialist;
 - (F) The Tribal Probation Officer.
- (k) Expungement. When a juvenile who has been the subject of any proceeding before the Court, other than those delinquency adjudications related to sexual offenses that count as convictions and require the offender to be registered as a sex offender as described in Section 42 U.S.C. § 16911(8), or in proceedings in which the juvenile has been tried as an adult under 10 GTBC § 414 and convicted, attains his or her 21st birthday, the Court shall destroy both the Court and law enforcement records relating to that juvenile.

(l) Contempt of Court.

- (1) Willful disobedience of, or willful interference with, an order of the Court constitutes contempt of court.
- (2) The Court may punish an adult for contempt of court with a fine not to exceed \$500, a jail term not to exceed 30 days, or both.
- (3) A juvenile may be punished for contempt of court with extension of probation, additional probation conditions, a fine not to exceed \$300, a jail term or detention not to exceed one week or any combination thereof.

(m) Medical Examination. The Court may order a psychiatric or psychological examination of a juvenile who is alleged to be a juvenile offender if issues of competence to stand trial or insanity are raised by the defense, or for any other reason that the Court deems appropriate. Reports shall be available to the defense and prosecuting attorney.

(n) Fingerprints. If latent fingerprints are found during the investigation of a offense and a law enforcement officer has reasonable grounds to believe that the fingerprints are those of a juvenile in custody, the officer may fingerprint the juvenile for the purpose of immediate comparison with the latent fingerprints; provided that the law enforcement officials have obtained the written approval of the Court prior to the taking of prints. Copies of the fingerprints shall be immediately destroyed if the comparison is negative or if a petition is not filed against the juvenile.

(o) Appeal.

- (1) For purposes of appeal, a record of the proceedings shall be made available to the juvenile, the juvenile's parent(s), guardian, custodian or legal representative. The party seeking the appeal shall pay costs of obtaining this record.
- (2) Any party to a Court hearing may appeal a final order or disposition of a case by filing a written notice of appeal with the Court within 28 days of the final order of disposition.
- (3) All appeals shall be conducted in accordance with applicable Tribal Codes and Court Rules.

§ 404. Procedural Rights: Notice Requirements. [History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999.]

(a) The notice and procedural rights listed in this Chapter shall be afforded parties in each of the following proceedings:

- (1) Preliminary Hearing (§ 413).
- (2) Transfer to Adult Division of Tribal Court (§ 414).
- (3) Diversion (§ 415).
- (4) Trial (§ 416).

(5) Disposition Hearing (§ 419).

§ 405. Notice. [History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999; and by Tribal Council motion, enacted December 20, 2017.]

(a) Notice of proceedings shall be given to:

- (1) The juvenile.
- (2) The juvenile's parent(s), guardian, custodian, or legal representative.
- (3) All legal counsel of record.
- (4) The Tribal Youth Intervention Specialist.

(b) Notice shall be given when a time for the proceedings has been established; provided at least 10 days is given before any non-preliminary hearing except in cases of emergency; provided further that notice is given as soon as possible in the case of preliminary hearings or in the event of an emergency.

(c) The notice shall contain:

- (1) The name of the Court;
- (2) The title of the proceeding;
- (3) A brief statement of the substance of the allegations against the juvenile;
- (4) The date, time, and place of the proceeding; and
- (5) A statement of the right to counsel, as set forth in § 407(a) of this Code.

(d) The notice shall be served in the following methods, if the Tribal Court feels it would be likely to provide actual notice to the party.

- (1) Hand delivery to the person, by a Tribal law enforcement officer or appointee of the Court;
- (2) Certified mail, if the summons cannot be served upon the person; or
- (3) By the following method(s), if the Tribal Court feels it would be likely to provide actual notice to the party:
 - (A) Service upon relatives, neighbors, friends, or others who are likely to know the party's whereabouts. If the person, who receives the summons, denies knowledge of the party's whereabouts, such service shall not be deemed adequate;
 - (B) Service by legal notice in a daily publication or mailing of the Tribe circulated to the Tribal membership; and by posting the legal notice at the Tribal center; or
 - (C) Service by legal notice in a daily newspaper in the county of respondent's last known residence for a three-day period, the last day of which is at least 10 days

prior to the hearing; and by posting the legal notice at the Tribal center.

§ 406. Summons. [History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999.]

- (a) At least 10 days prior to a trial or disposition hearing, the Court shall issue summons to:
 - (1) The juvenile;
 - (2) The juvenile's parent(s), guardian, legal representative, or custodian;
 - (3) Any person the Court believes necessary for proper adjudication of the matter(s) before the Court; and
 - (4) Any person the juvenile believes necessary for proper adjudication of the matter(s) before the Court; subject to the Court's discretion.
- (b) The summons shall contain the name of the Court and title of the proceedings; and the date, time, and place of the hearing.
- (c) A copy of the petition shall be attached to the summons. The summons shall be served in the following order of preference:
 - (1) Hand delivery to the person, by a Tribal law enforcement officer or appointee of the Court;
 - (2) Certified mail, if the summons cannot be served upon the person; or
 - (3) By the following method(s), if the Tribal Court feels it would be likely to provide actual notice to the party:
 - (A) Service upon relatives, neighbors, friends, or others who are likely to know the party's whereabouts. If the person, who receives the summons, denies knowledge of the party's whereabouts, such service shall not be deemed adequate;
 - (B) Service by legal notice in a daily publication or mailing of the Tribe circulated to the Tribal membership; and by posting the legal notice at the Tribal center; or
 - (C) Service by legal notice in a daily newspaper in the county of respondent's last known residence for a three-day period, the last day of which is at least 10 days prior to the hearing; and by posting the legal notice at the Tribal center.
- (d) A person who has been issued a summons, who has received notice of hearing, and who fails to appear at the hearing, shall be held in contempt of court, unless good cause is shown why that person did not appear.

§ 407. Rights of Parties. [History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999.]

- (a) Right to Counsel:
 - (1) The judge shall inform the juvenile and the juvenile's parent(s), guardian, legal

representative or custodian of their right to retain counsel by reading the following statement: "you have a right to have a lawyer or other person represent you at this hearing. However, you or your family must pay any fees for such representation."

- (2) If the parties are unable to pay for counsel, the judge shall make known to them any available services providing representation of which the judge is aware.
 - (3) If the parties appear at the hearing without counsel, the judge, after informing the parties of their right to counsel and the availability of legal representation, may grant a continuance, if they need additional time to seek counsel.
- (b) The juvenile need not be a witness against, nor otherwise incriminate him/herself.
 - (c) A parent, guardian, or custodian may not be compelled to give testimony against him/herself or against the juvenile, consistent with Section 1(d), Article X of the Tribal Constitution.
 - (d) The Court shall give the juvenile, the juvenile's parent(s), legal representative, or custodian the opportunity to introduce evidence, to be heard on their own behalf, and to examine all witnesses.

§ 408. Juvenile Offender Procedure. [History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999.]

- (a) Complaint. A complaint may be filed with the Tribal Prosecutor by a law enforcement officer or by a person who has knowledge of the facts alleged. The person who files the complaint shall sign the complaint, under oath. The complaint shall contain:
 - (1) Name, age, date of birth, address, name of custodial parent or guardian, tribal affiliation, tribal ID # if applicable;
 - (2) A concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged act(s) occurred; and
 - (3) A list of witnesses known to the person who files the complaint.
- (b) Petition. Proceedings under this Code shall commence upon the filing of a petition by the Tribal Prosecutor on behalf of the Tribe. The petition shall include:
 - (1) The name, birth date, address, tribal affiliation and ID # if applicable.
 - (2) The names and addresses of the juvenile's parent(s), guardians, or custodian;
 - (3) Citation to the specific provision(s) of this Code which gives the Court jurisdiction of the proceedings;
 - (4) Citation to the Tribal Criminal Code provision(s) which the minor is alleged to have violated;
 - (5) If the juvenile is in detention or shelter care, the place of detention or shelter care and the time he/she was taken into custody;
 - (6) A statement of the facts which brings the juvenile within the jurisdiction of the Court;

and

- (7) A list of witnesses known to the tribe upon filing of the petition.

§ 409. Warrant. [History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999.]

The Court may enter an order called a warrant, directing that a juvenile be taken into custody if:

- (a) The Court finds probable cause to believe that the juvenile committed the delinquent act alleged in the complaint and there is probable cause to believe that the juvenile will fail to appear for a hearing on the matter; or
- (b) If the juvenile is not taken into custody she/he is likely to endanger himself/herself or others.

§ 410. Custody. [History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999.]

A juvenile may be taken into custody by a law enforcement officer if:

- (a) The officer has reasonable cause to believe that a delinquent act has been committed and that the juvenile has committed the delinquent act; or
- (b) A warrant pursuant to § 409 of this Code has been issued for the juvenile.

§ 411. Law Enforcement Officer's Duties. [History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999.]

A law enforcement officer who takes a juvenile into custody, pursuant to § 410 of this Code, shall proceed as follows:

- (a) Explain the following rights to any juvenile taken into custody prior to questioning:
 - (1) The juvenile has a right to remain silent;
 - (2) Anything the juvenile says can be used against the juvenile in court; and
 - (3) The juvenile has the right to the presence of an attorney or advocate during questioning.
- (b) Release the juvenile to the juvenile's parent(s), guardian, or custodian and give such counsel and guidance as may be appropriate, unless shelter care or detention is necessary because:
 - (1) The juvenile is in danger of injury;
 - (2) The juvenile is under the influence of alcohol or controlled substances; or
 - (3) The juvenile will not cease illegal conduct and release is likely to result in injury to the juvenile or others.
- (c) If the juvenile is not released, an officer shall make immediate and recurring efforts to notify the juvenile's parent(s), guardian, or custodian to inform them that the juvenile has been taken

into custody and inform them of their right to be present with the juvenile until a determination of the need for shelter care or detention is made by the Juvenile Justice Officer or the Juvenile Probation Officer.

- (d) If the juvenile is not released, the juvenile shall be taken, as soon as is practical, to the tribe's Juvenile Justice Officer or Juvenile Probation Officer for assistance with placement in detention or shelter.

§ 412. Detention and Shelter Care. [History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999; and by Tribal Council motion, enacted December 20, 2017.]

- (a) A juvenile alleged to be a juvenile offender may be detained pending a court hearing, in any of the following locations, listed in order of preference:
 - (1) A foster care home on the reservation that has been approved by GTB Department of Human Services;
 - (2) A foster care facility on the reservation that has been approved by the GTB Department of Human Services;
 - (3) A private family home on the reservation that has been approved by the GTB Department of Human Services;
 - (4) A licensed foster care home off the reservation that has been approved by the Tribe;
 - (5) A licensed foster care facility off the reservation that has been approved by the Tribe;
 - (6) A private family home off the reservation that has been approved by the Tribe; or
 - (7) An approved detention facility within the State of Michigan.
- (b) A juvenile who is 16 years of age or older may be detained in a jail or other licensed detention facility, used for the detention of adults only if:
 - (1) A facility in § 412(a) is not available or would not assure adequate supervision of the juvenile;
 - (2) Detention is in a cell separate from adults; and
 - (3) Adequate supervision is provided 24 hours a day.
- (c) A juvenile who is 16 years of age or older may also be detained in a jail or other licensed detention facility used for the detention of adults if that juvenile is intoxicated, provided that:
 - (1) A foster care or juvenile detention facility is not immediately available or is not equipped to hold/supervise the intoxicated juvenile; and
 - (2) Detention is in a cell separate from adults; and
 - (3) The juvenile is released as soon as he or she is sober, unless further detention under § 411(b) is warranted.

§ 413. Preliminary Hearing. [History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999; and by Tribal Council motion, enacted December 20, 2017.]

- (a) If a juvenile has been released to his/her parent(s), guardian, or custodian, the Court shall conduct a preliminary hearing within 10 days of the filing of the petition for the sole purpose to determine whether probable cause exists to believe that the juvenile committed the alleged delinquent act(s).
- (b) If a juvenile is placed in custody, detention or shelter care, the Court shall conduct a preliminary hearing within 72 hours of the placement for the purpose of determining:
 - (1) Whether probable cause exists to believe that the juvenile committed the alleged delinquent act; and
 - (2) Whether continued detention or shelter care is necessary pending further proceedings.
- (c) If the juvenile'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 appearance of the juvenile's parent(s), guardian, or custodian, the Court shall recess for not more than 24 hours and direct the tribal prosecutor to make continued efforts to obtain the presence of the juvenile's parent(s), guardian, or custodian. If it does not appear that further efforts are likely to produce the parent(s), guardian, or custodian, or if it appears that the parent(s), guardian, or custodian is/are unable or unwilling to provide effective support or guidance to the juvenile during the pendency of the juvenile offender proceedings, the Court shall appoint legal counsel to serve until adjudication and disposition of the petition.
- (d) The Court shall hear testimony concerning:
 - (1) The circumstances that gave rise to the petition and/or the taking of the juvenile into custody; and
 - (2) The need for detention or shelter care.
- (e) If the Court finds that probable cause exists to believe that the juvenile committed the delinquent act, the juvenile shall be ordered to appear at a trial on a date and at a time set by the Court. The juvenile shall be released to his/her parent(s), guardian, or custodian unless the alleged act is serious enough to warrant detention or shelter care and:
 - (1) There is reasonable cause to believe that the juvenile will run away and/or be unavailable for further proceedings; or
 - (2) There is a reasonable cause to believe that the juvenile will commit a serious act causing damage to person(s) or property.
- (f) If a juvenile is released to his parent(s), guardian, or custodian, the Court may impose conditions on the release which may include but are not limited to: the posting of a bond; electronic monitoring; house arrest; travel restrictions; mandatory attendance at school; no contact with named individuals; banishment from Tribal programs or Tribal property.

- (g) The Court may release a juvenile to a relative or other responsible adult Tribal member, if the parent(s), guardian, or custodian consents to the release. If the juvenile is 14 years of age or older, the juvenile and the juvenile's parent(s), guardian, or custodian must consent to the release.
- (h) If the Court finds that probable cause exists to believe that the juvenile committed the alleged delinquent act and there is a need for detention or shelter care, the juvenile's detention or shelter care shall be continued. The Court shall consider recommendations prepared by the Tribe's juvenile justice officer or the Tribe's juvenile probation officer.
- (i) If the Court does not find probable cause to believe that the juvenile committed the alleged delinquent act, the petition shall be dismissed and the juvenile released.

§ 414. Transfer to the Adult Division of Tribal Court. [History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999; and by Tribal Council motion, enacted December 20, 2017.]

- (a) If the juvenile is 17 years of age at the time of the alleged delinquent act, the prosecutor shall have the option of filing the action as a juvenile offender proceeding or as an adult criminal matter. If the juvenile is between the ages of 14 and 16 and is alleged to have committed an act that would have been considered a crime if committed by an adult, the prosecutor may file a petition requesting the Court to transfer the juvenile to the Adult Division of the Court.
- (b) The Court shall conduct a hearing to determine whether jurisdiction of the juvenile should be transferred to the Adult Division of the Court.
 - (1) The transfer hearing shall not be held more than 10 days after the petition is filed.
 - (2) Written notice of the transfer hearing shall be given to the juvenile and the juvenile's parent(s), guardian, or custodian and legal representative or counsel at least 72 hours prior to the hearing.
- (c) Prior to the hearing, the Tribe's juvenile probation officer shall be responsible for an investigation and the preparation of a written report to be submitted to the Court.
- (d) The following factors shall be considered in determining whether to transfer jurisdiction of the juvenile to the Adult Division of the Court:
 - (1) The nature and seriousness of the offense allegedly committed by the juvenile; and
 - (2) The juvenile's age, mental and physical condition, past record of offenses, and responses to previous Court efforts at rehabilitation.
- (e) The Court may transfer jurisdiction of the juvenile to the Adult Division of the Court if the Court finds clear and convincing evidence that both of the following circumstances exist:
 - (1) There are no reasonable prospects for rehabilitating the juvenile through resources available to the Court; and
 - (2) The alleged offense is serious and constitutes a substantial danger to the public.

- (f) When a juvenile is transferred to the Adult Division of the Court, the Court shall issue a written transfer order containing reasons for the order. The transfer order constitutes a final order for purposes of appeal.

§ 415. Diversion. [History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999.]

- (a) The Tribal prosecutor, with the concurrence of the Tribe's juvenile probation officer, and the Peacemaker coordinator, may choose to divert the juvenile rather, than initiate a juvenile offender proceeding.
- (b) The Tribal prosecutor, the Tribal juvenile probation officer, and the Peacemaker coordinator may hold an informal conference with the juvenile and the juvenile's parent(s), guardian or custodian to discuss alternatives to the filing of a petition if:
 - (1) The admitted facts bring the case within the jurisdiction of the Court;
 - (2) A diversion of the matter would be in the best interests of the juvenile and the Tribe; and
 - (3) The juvenile's parent(s), guardian or custodian voluntarily consent to the diversion conference after they have received an explanation of their rights.
- (c) This Section does not authorize the Tribal prosecutor to compel involuntary action of the parties involved.
- (d) The Tribal prosecutor, with the concurrence of the juvenile probation officer and the Peacemaker coordinator, shall set forth in writing the conference findings and the disposition agreed to by the parties.
- (e) Any disposition arranged through the diversion procedure of this Section shall be concluded within six months unless an extension is agreed to by all parties.
- (f) The Tribe's juvenile probation officer shall monitor the progress of the juvenile. If at any time after 30 days the juvenile probation officer concludes that positive results are not being achieved, the juvenile probation officer shall recommend that the presenting officer file a petition pursuant to § 408(b) of this Code.
- (g) No statement made during the diversion process may later be admitted into evidence at a trial or any other proceeding against the juvenile under this Code.
- (h) Upon successful completion of the diversion, the Tribe's juvenile probation officer will notify the Tribal prosecutor and no further action will be required.

§ 416. Trial. [History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999; and by Tribal Council motion, enacted December 20, 2017.]

The Court shall conduct a bench trial for the sole purpose of determining the guilt or innocence of a juvenile. Such trial shall be closed to the public.

- (a) If the juvenile admits the allegations of the petition, the Court shall proceed to the disposition hearing only if the Court finds:
 - (1) The juvenile fully understands his/her rights as set forth in § 407 of this Code and fully understands the potential consequences of his/her admission(s);
 - (2) The juvenile voluntarily, knowingly, and intelligently admits to all facts necessary to constitute a basis for Court jurisdiction; and
 - (3) The juvenile has not, in his/her admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.
- (b) The Court shall hear testimony concerning the circumstances which give rise to the petition.
- (c) If the allegations of the petition are sustained by proof beyond a reasonable doubt, the Court shall find that the juvenile is a juvenile offender and schedule a disposition hearing.
- (d) A finding that the juvenile is a juvenile offender shall constitute a final order for purposes of appeal.

§ 417. Trial Continuances. [History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999; and by Tribal Council motion, enacted December 20, 2017.]

Continuances of a trial may be granted upon:

- (a) Motion of the juvenile for good cause shown;
- (b) Motion of the Tribal prosecutor that material evidence or witnesses are unavailable, a finding by the Court that the Tribal prosecutor has exercised due diligence to obtain the evidence or appearance of witnesses, and reasonable grounds exist to believe that the evidence will become available or that the witnesses will appear; or
- (c) Order of the Court during a period of diversion under § 415 of this code.

§ 418. Predisposition Report. [History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999.]

- (a) The juvenile probation officer shall prepare a written report describing all reasonable and appropriate alternative dispositions. The report shall contain a specific plan for the care of, and assistance to the juvenile, designed to resolve the problems presented in the petition.
- (b) The report shall contain a detailed explanation of the necessity for the proposed disposition plan and its benefits to the juvenile.
- (c) Preference shall be given to the disposition alternatives which are listed in § 420. The alternative least restrictive of the juvenile's freedom, consistent with the interests of the Tribe, shall be selected.
- (d) If the report recommends placement of the juvenile somewhere other than with the juvenile's parent(s), guardian, or custodian, it shall state the specific reasons underlying its placement

recommendation.

- (e) The juvenile probation officer shall present the predisposition report to the Court, the juvenile's representative, and the Tribal prosecutor at least three days before the disposition hearing.

§ 419. Disposition Hearing. [History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999; and by Tribal Council motion, enacted December 20, 2017.]

- (a) A disposition hearing shall take place not more than 21 days after the trial or after the admission of responsibility at the preliminary hearing.
- (b) The Court shall take testimony and receive evidence concerning proper disposition at the hearing.
- (c) The Court shall consider the predisposition report submitted by the Tribe's juvenile probation officer. Prior to the hearing, the affected parties shall be given an opportunity to review all reports and supporting documentation. During the hearing, the parties shall have the opportunity to controvert the factual contents and the conclusions of any reports. The Court shall also consider the alternative predisposition report prepared by the juvenile or the juvenile's legal representative.
- (d) The disposition order constitutes a final order for purposes of appeal.

§ 420. Disposition Alternatives. [History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999.]

If a juvenile has been found to be a juvenile offender, the Court may make the following disposition for any term until the juvenile reaches the age of 19:

- (a) Place the juvenile on probation subject to conditions set by the Court;
- (b) Place the juvenile in a detention and/or a treatment facility with an agency designated by the Court;
- (c) Order the juvenile to perform community service work at the direction of the juvenile probation officer;
- (d) Order the juvenile to pay restitution, including costs related to detention, or to provide restorative services to the injured party or parties. The Court may access the minor's per capita trust to provide restitution upon the motion of the Tribal prosecutor or an aggrieved party based upon proper proofs offered at an evidentiary hearing;
- (e) Order any other measure the Court deems necessary and proper to correct the behavior of the juvenile offender and to insure the safety of the community.

§ 421. Modification of Disposition Order. [History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999.]

- (a) A disposition order of the Court may be modified, for good cause, upon a showing of a change of circumstances. The Court may modify a disposition order at any time, upon motion of the following:
 - (1) The juvenile;
 - (2) The juvenile's parent(s), guardian, or custodian;
 - (3) The Tribal prosecutor; or
 - (4) The Tribal juvenile probation officer.
- (b) If the modification involves a change of custody, the Court shall conduct a hearing to review its disposition order as follows:
 - (1) The Court shall review the performance of the juvenile, the juvenile's parent(s), guardian, or custodian; and review the reports of the prosecutor and other persons providing assistance to the juvenile and the juvenile's family;
 - (2) If the request for review of disposition is based upon an alleged violation of a court order, the Court shall not modify its disposition order unless it finds clear and convincing evidence of the violation.

§ 422. Parental responsibility. [History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999; and by Tribal Council motion, enacted December 20, 2017.]

An Indian Tribe, a department of an Indian Tribe, a municipal corporation, county, township, village, school district, a state, a department of a state, person, partnership, corporation, association, or an incorporated or an unincorporated religious organization may recover damages in an amount not to exceed \$15,000 in a civil action in Tribal Court against the parents or parent of an unemancipated minor, living with his or her parents or parent, who has maliciously or willfully destroyed real, personal, or mixed property which belongs to an Indian Tribe, a department of an Indian Tribe, a municipal corporation, county, township, village, school district, a state, a department of a state, person, partnership, corporation, association, or religious organization, incorporated or unincorporated, or who has maliciously or willfully caused bodily harm or injury to a person, property, or an animal.