

**Title VI**  
**Children's Protection Code**

## **TITLE VI - Children's Protection Code**

### Legislative History:

- **Resolution #117-21:** “Hereby Removing and Amending Language Identified within Title VI Children’s Protection Code, Section 3.2(B)(1) of the Chippewa Cree Tribal Law and Order Code (TLOC), with the Understanding that the Remaining Language within Section 3.2(B)(1) will Continue to Govern,” was approved by the Chippewa Cree Tribal Business Committee on August 5, 2021.

## Section 1. GENERAL

### 1.1 Authority of the Court

The Children's Court is authorized to cooperate fully with all federal, state, tribal and public organizations to participate in any diversion, rehabilitation, or training programs to carry out the purposes of this code. The Court shall utilize any and all services that may be furnished by the previously mentioned entities as it deems necessary.

### 1.2 Powers and Duties of the Court

No adjudication upon the status of any child in the jurisdiction of the Children's Court shall be deemed criminal or be deemed of a conviction of a crime, unless the Children's Court refers the matter to the Adult Court. Therefore, the disposition of a child or evidence given shall not be admissible as evidence against the child in any proceedings in another court.

### 1.3 Definitions

- A. "Detention" Holding or temporary placement of a youth in a facility other than the youth's own home for the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody.
- B. "Detention Facility" Means a physically restricting facility designed to prevent a youth from departing at will.
- C. "Parent" Means the natural or adoptive parents but does not include a person whose parental rights have been judicially terminated.
- D. "Probable Cause" Upon examination of initial complaint or affidavits that would lead a reasonable person to believe that an act had or was being committed.
- E. "Youth" A person who is less than 18 years of age
- F. "Delinquent Act" an act which if committed by an adult is designated a crime under the Chippewa Cree Tribe Criminal Code.
- G. "Juvenile Offender" a person who commits a delinquent act prior to his eighteenth (18) birthday.
- H. "Guardian Ad Litem" for the purpose of a court proceeding, the court shall appoint a guardian ad litem for those youth who do not have a natural or adoptive parent, guardian or custodian willing and able to exercise effective guardianship.

## Section 2. ARRESTS AND DETAINMENT OF YOUTH OFFENDER

### 2.1 Arrest with a Warrant

A warrant may be entered directing that a juvenile be taken into custody if the court finds there is probable cause to believe the juvenile committed the delinquent act alleged in the complaint and the court finds one or more of the following:

- 1.) He/She has allegedly committed an act that if committed by an adult would be a criminal offense.
- 2.) He/She has violated a valid court order or Treatment / after care agreement.
- 3.) His / Her detention is required to protect persons or property.
- 4.) There are no adequate assurances that he / she will appear for court when required.
- 5.) The law enforcement officer has probable cause to believe that the person had committed an offense.

### 2.2 Arrest without a Warrant

A police officer may arrest a juvenile when no warrant has been issued upon the following:

- 1.) The offense was committed in the presence of a tribal law enforcement officer or a sworn officer of the court.

### 2.3 Rights of Offender

- A. When a youth is taken into custody for questioning upon a matter that could result in a petition alleging that the youth has committed a crime the youth shall be advised of the following rights that apply to him:
  - 1.) Right to remain silent and anything he says may be used against him in a court of law.
  - 2.) Right to counsel at his own expense.
  - 3.) Right to be informed of the charges against him;
- B. When questioning of youth allowed, if the youth is under 18 years of age the youth may only be questioned when his / her parents are present.
- C. Detaining of youth requires a hearing immediately. If the youth is not released a hearing must be held within 24 hours, excluding weekends and holidays to determine if there is probable cause.
- D. Notice, the person responsible for or assigned to give notice shall make diligent efforts to immediately notify the parents, guardians or legal custodian that the youth has been taken into custody.

- E. Detainment of youth permitted. At the probable cause hearing the court may continue to detain the youth or the youth may be released to the custody of his parents, guardian or legal custodian.

### Section 3. INFORMAL AND FORMAL PROCEEDINGS

#### 3.1 Informal Proceeding

- A. When the Children's Court Counselor reviews a complaint, he/she may decide it is in the youth's best interest to enter into an informal agreement before a petition is filed. Prior to the case being assigned a case number and placed in docket, the Children's Court Counselor, Presenting Officer, Probation Officer, the youth and the youth's parents may enter into an informal agreement to give counsel and advice to the youth, the Children's Court Counselor shall read the child his rights according to the Indian Civil Rights act.
- B. This Informal Hearing process will be exercised based on Court Counselors discretion.
- C. Agreement To Be In Writing; such agreement must be in writing and signed by the youth and his parents or the person having legal custody of the youth.
- D. When Incriminating Statements are Admissible; an incriminating statement relating to any act or omission constituting delinquency made by the participant of the person giving counsel or advice may not be used against him in any proceeding under this title. This does not apply to the use of voluntary and reliable statements that are offered for impeachment purposes. Admissions made to the Children's Court Counselor may not be used against them or the counselor may not be made to testify against any child.
- E. Voluntary; all parties involved with hearing must be made aware of the voluntary status of this hearing. This section does not authorize the Children's Court Counselor to compel any person to appear at any conference or produce any papers.
- F. Disposition; the following dispositions may be imposed by this informal proceeding;
  - 1. Probation;
  - 2. Restitution upon approval of the Children's Court Judge; or
  - 3. House Arrest and assessment of Drug and Alcohol issues
  - 4. Community Service when appropriate and / or
  - 5. Counseling, evaluation and / or treatment
  - 6. Cultural Awareness

#### 3.2 Formal Proceeding:

- A. Petition. A petition initiating proceedings alleging the youth to be a delinquent or in need of supervision shall be entitled "In the Matter of . . . . ., a youth; and shall set forth with specificity the charge of an offense including the following:
  - 1. Name of Offense; and

2. state the facts constituting the offense in ordinary concise language and in such manner as to enable a person of common understanding to know what is intended;
3. state the time and place of the offense as definitely as possible;
4. the names and residence addresses of parents, guardian or spouse or if none of the parents guardian or spouse resides within the exterior boundaries of the Rocky Boys Indian reservation; the nearest adult relative residing nearest to the court;
5. whether the youth is in detention or shelter care;
6. A list of witnesses who will be used in proving the charges.

#### B. Court Date and Summons

1. Upon receipt of the complaint the court shall set a time and place within fourteen (14) calendar<sup>1</sup> days for the preliminary inquiry hearing. All subsequent hearings will be set and held within a reasonable amount of time of the date the matter was, unless there is good cause to continue the hearing, but in any event the hearing must be held as soon as possible and accorded preferential priority.
2. Summons. The presenting officer, upon filing the petition must have the youth and the person responsible for the youth personally served with a copy of the petition. The summons shall contain the date and the time and place for the youth to deny or admit the allegations in the petition.

#### C. Preliminary Inquiry

1. if a child is placed in detention or shelter care by Children's court Staff, the Children's Court shall hold a preliminary inquiry within twenty four (24) hours to determine whether probable cause exists to believe the child committed the alleged delinquent act; and if continued detention is necessary pending further proceedings.
2. If a child has been released to his parent, guardian or custodian, the children's court shall conduct a preliminary inquiry within a reasonable amount of time after receipt of a complaint to determine if probable cause exists.
3. Notice of the preliminary inquiry shall be given to the child and his parent, guardian or custodian as soon as the time for the inquiry has been established it shall include name of the court; the title of the proceedings; and a brief statement of the substance of the allegations against the child; and the date, time and place of the preliminary inquiry

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<sup>1</sup> Amendment to Title VI Children's Protection Code Section 3.2(B) passed as a first reading on July 8, 2021, during a regular monthly Business Committee meeting, and was adopted by Resolution 117-21, on August 5, 2021.

a.)The notice shall be delivered by a Tribal Law Enforcement officer, or an appointee of the Children's Court

D. Transfer to Adult Court

1. The Presenting Officer may file a petition requesting the Children's Court to transfer the minor to Adult Tribal Court if the minor is fourteen years of age or older and is alleged to have committed an act that would have been considered a crime if committed by an adult.
2. The children's court shall conduct a hearing to determine whether jurisdiction of a minor should be transferred to adult court.
  - a. the transfer hearing shall be held within a reasonable time from when the petition to transfer is filed.
  - b. written notice of the transfer hearing shall be given to the minors' parent, guardian or custodian at least seventy two hours prior to the hearing.
  - c. right to counsel
    - i. The Children's Court shall inform the minor and his parents of their rights according to the Indian Civil Rights Act. a. right to counsel at their own expense.
  - d. the minor need not be a witness against, nor otherwise incriminate himself
3. Prior to the hearing, a study and report will be submitted in writing by the Presenting Officer and include;
  - a. the nature and seriousness of the offense with which the minor is charged.
  - b. the nature and condition of the minor as evidenced by his age, mental and physical condition, past record of offenses and responses to past Children's court efforts at rehabilitation.
- 4 The Children's court may transfer jurisdiction of the minor to adult court if the Children's court finds clear and convincing evidence that both of the following circumstances exist;
  - a. there are no reasonable prospects for rehabilitation of the minor through resources available to the children's court and
  - b. The offense allegedly committed by the minor evidences a patter of conduct which constitutes a substantial danger to the public.

E. Adjudicatory Hearing

The Children's Court shall conduct the adjudicatory hearing for the sole purpose of determining the guilt or innocence of the child. The hearing shall be private and closed.

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3.3 Placement of Youth

The child shall be released to his parent, guardian or custodian and ordered to appear at the hearing on the date set by the court, however if it appears the youth needs to

be placed in a secure facility the court may endorse a warrant as specified under section 2, 2.1 or order continued detention if the youth is already in a secure facility. The court may release a child under this chapter to a relative or other responsible adult if the parent or guardian of the child consents to the release. The best interest of the child shall be the determining factor.

#### 3.4 Entry of Plea

At this hearing the judge shall advise the youth of his rights existing under the law and determine whether the youth admits or denies the offense alleged in the petition. An adjudicatory hearing must be set immediately to determine whether the offense is supported beyond a reasonable doubt.

#### 3.5 Recording of Formal Hearing

A formal hearing must be recorded verbatim by whatever means the court considers appropriate.

#### 3.6 Proceedings Closed

The hearing shall be closed however; the proceedings may be open to the victim and the victim's immediate family at the judge's discretion.

#### 3.7 Youths Presence Mandatory

The youth must be present with their parent or guardian at every formal hearing.

#### 3.8 Trial by Judge

If the youth denies all offense alleged in the petition, the youth or person responsible for the youth shall receive an adjudicatory hearing

#### 3.9 Application of Rules of Civil Procedure and Evidence

At the formal hearing the rules of evidence and rules of civil procedure are applicable.

### SECTION 4. SENTENCING, HEARING & DISPOSTION

#### 4.1 Sentencing Dispositional Hearing

- A. Sentencing Hearing Scheduled. If the youth is found to be a youth offender at a formal hearing or if such is adjudicated on the basis of a valid admission of the allegations, the court shall schedule a sentencing hearing.
- B. When Conducted. As soon as practical the court shall conduct a sentencing disposition hearing.
- C. Pre – Sentence Investigation & Report. Before the Dispositional Hearing the court shall direct that a pre-sentence investigation be made and a report be produced and submitted in writing by the Children's Court Counselor or a youth probation officer if such officer is employed by the Tribe. Such report must be furnished to the youth or youths counsel prior to the Dispositional



hearing and contain a detailed summary of the youth, the youth's family and the youth's environment and all relevant matters that address the need for care and / or rehabilitation. If the youth has been examined by a doctor the result of such examination shall be included in the report. The presiding judge shall have the authority in his/ her discretion to waive a pre disposition report if such action is deemed necessary and appropriate in the best interests of the child because of timelines or related issues.

#### 4.2 Disposition

The court may enter its judgment making one or more of the following dispositions:

1. place the youth on probation;
2. Place the youth in an institution or with an agency designated by the Children's Court for not more than one year.
3. Require the youth to pay restitution. The court may review the following factors when determining whether the youth shall pay restitution: age, ability to pay, ability of the parents or person responsible for the youth to pay, amount of damage to the victim, and the legal remedies of the victim.
4. Community Service. In lieu of fines or fees
5. Cultural Awareness. To participate, observe, listen or otherwise interact with another person who is knowledgeable in the tradition and cultural activities / ceremonies of the respective tribe.

### SECTION 5. PROBATION, PROBATION OFFICERS

#### 5.1 Cause For Probation

When a juvenile is fitted to the care and custodian, the court may also assign the matter to a probation officer who shall routinely inquire to the juveniles welfare and who shall require from such custodian a periodical report if the court so orders. Such report shall set out in detail matters bearing on the juvenile's condition and welfare as well as progress that have been outlined in the original court order. The report shall be filed with the court.

#### 5.2 No Limitations on Authority

Nothing in this chapter shall be construed as prohibiting an officer of the law from taking into custody a juvenile who is found violating a law or ordinance, who is reasonably believed to be a fugitive from his parents or from justice or whose surroundings are such as to endanger his / her health, morals or welfare.

#### 5.3 Probation Officers

Probation Officers shall have the authority of peace officers they shall:

1. Look after the interests of delinquent juveniles of the reservations.
2. Make investigations and file petitions;
3. be present in court when cases are heard concerning juveniles and represent the interests of the court;

4. Assist in the collection of sums ordered paid of juveniles and in the execution of the judgments of the court and
5. furnish the court with information and assistance as it may require;
6. Routinely administer urinalysis tests as ordered by the court
7. Routinely conduct searches of probationer's person, sleeping quarters or other property in performance of their respective positions.
8. Shall be deputized and trained as to carry out the duties to the best of their ability to include training in use of force, basic detention procedures, protective spray, foam or gel, handcuffing procedures, arrest procedures and transportation of juvenile clients.

## SECTION 6. PROBATION REVOCATION

- A. Violation of Probation. A youth on probation incident to an adjudication as a youth offender who violated the terms of the probation may be proceeded against in a probation revocation proceeding.
- B. Petition. A Petition shall be filed entitled "Petition for Revocation of Probation" by the Presenting Officer or Probation Officer. Petitions to revoke shall be subject to the same procedure as petitions alleging a youth to be an offender.