

TITLE 5
TURTLE MOUNTAIN CHILDREN'S CODE
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Title 5
TURTLE MOUNTAIN CHILDREN'S CODE

Chapter 5.01
General Provisions

5.0101 Purpose.

This Children's Code shall be construed to effectuate the following public purposes:

It is our conviction that protection of the Children of Turtle Mountain Chippewa Tribe is primarily the responsibility of the parents; and if, for whatever reason, parents falter, and children or the Tribal Community are exposed to harmful situations or actually harmed, the Tribe must intervene to correct the situation and protect the child. The purpose of this Code shall be to protect our children through stabilizing and strengthening families whenever possible, to assure the safety and welfare of the children, and to protect the peace and security of the community.

5.0102 Definitions.

1. "Child" means any Indian person less than eighteen (18) years of age.
2. "Adult" means any Indian person eighteen (18) years of age and older.
3. "Delinquent Act" means: An act designated an offense under Tribal Resolution as enumerated in the Turtle Mountain Tribal Code.
4. "Delinquent child" means any Indian child who has committed a delinquent act and is in need of treatment and/or rehabilitation.
5. "Status Offense" means:
 - (a) Laws or ordinances which apply only to children, or
 - (b) An act committed by a child which is in violation of a statute, ordinance or resolution but if committed by an adult does not constitute a crime.

6. "Adjudication" means the giving or pronouncing of a judgment or decree in a case.
7. "Petition" means a written request to the Court that it take an action, usually in a case involving juveniles or civil matters.
8. "Extended Family Member" means:
 - (a) A person who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law, sister-in-law, niece or nephew, first or second cousin, or stepparent, or any other person defined by law or custom of the Turtle Mountain Indian Community.
 - (b) Any person related by blood or marriage to the family or any individual who is viewed by the family as a relative in accordance with customs of the Turtle Mountain Tribe. In situations where the relationship must be attested to by two reliable witnesses.
 - (c) Any person related by blood or marriage to the child having significant contact with the child or who is viewed as an extended family member in accordance with the customs of the Turtle Mountain Tribe.
9. "Foster Care Placement" means the arrangement for the care of an Indian child in a licensed facility such as: shelter care, a foster home, or child caring institution, or in the home of an extended family member.
10. "Juvenile Court" means the Tribal Court with jurisdiction over child welfare matters.
11. "Indian Child" means a child of Indian descent who is under eighteen (18) years of age and:
 - (a) Is enrolled or eligible for enrollment in the Turtle Mountain Band of Chippewa Indians or other recognized Indian tribe; or
 - (b) is of the first linear descent of an enrolled member of the Turtle Mountain Band of Chippewa Indians or other recognized Indian tribe.

12. "Receiving Foster Home" means a licensed foster home suitable for immediate placement of Indian children when taken into custody or pending medical examination and court disposition.
13. "Specialized Foster Care" means a program of child welfare which seeks to provide special care for physical, mental or emotional conditions of minor children.
14. "Pre-adoptive Placement" means the temporary placement of an Indian child in a licensed foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement.
15. "Adoptive Placement" means the placement of a child who is legally free for adoption with a family who is certified by the Court for adoption.
16. "Summons" means to notify a person in writing that an action has commenced against him/her and that he or she is required to answer to it at a time and place named.
17. "Disposition Hearing" means a hearing held after a child is found delinquent or unruly. The hearing determines what action will be taken in behalf of the child.
18. "Physical Custody" means actual possession and control of a child.
19. "Detention" means the act of keeping back or withholding, either accidentally or by design, a person or thing. Usually the person is not under arrest.
20. "Probation" means allowing a person convicted of a crime, delinquent act or unruliness to go at large, generally under the supervision of a probation officer.
21. "Best Interest of the Child" shall refer to the medical, psychological, educational, physical and emotional needs of a child which can reasonably be

provided to insure the best opportunity for a successful life.

22. "Abandon" refers to the leaving of a child for a prolonged period of time without the parent or legal custodian making proper arrangements for his care and nourishment.
23. "Tribal Court" refers to the Turtle Mountain Tribal Court as established by the Turtle Mountain Tribe.
24. "Child Abuse & Neglect" refers to acts or omissions made by persons who is in any manner related and/or responsible for any minor child's care who purposefully or negligently exposes the child to any reasonably foreseeable danger to the child's physical or psychological health or in disregard of the substantial risk of harm exposes or allow exposure to circumstances which:
 - (a) cause substantial or multiple bruises or internal injuries;
 - (b) cause injury to skeletal structures;
 - (c) cause substantial soft tissue swelling;
 - (d) lead to malnutrition or dehydration;
 - (e) cause burns;
 - (f) cause poisoning;
 - (g) cause extreme mental distress;
 - (h) cause failure to thrive;
 - (i) cause death;
 - (j) cause subdural hemotoma; and such disorder is not justifiable explained under circumstances justified by the child's history or accident. Also included within this definition is:
 - (k) incest;
 - (l) prostitution;

- (m) sexual fondling;
- (n) sexual assault;
- (o) obscene or pornographic photography or filming;
- (p) providing non-prescription drugs and alcohol not administered in a religious or cultural ceremony;
- (q) inadequate food, shelter and clothing if not based upon poverty;
- (r) failure to provide or require a child under their custody and/or control to obtain an education.

26. "Dependent Child" means a child who has no parent or custodian available willing and able to care for the child.

27. "A Sexually Abused Child" means a child who is found to be in one or more of the following situations.

- (a) A non consenting minor involved in sexual activity with an adult.
- (b) Any child, consenting or non consenting, who is involved in a sexual activity with an adult or another child.
- (c) Any child forced to perform sexual services in exchange for debts or favors.
- (d) Any non-consenting child who is forced to perform sexual acts by other minors.

28. "Sexual Abuse" includes any contacts or interactions between a child and an adult in which the child is being used for the sexual stimulation of the perpetrator or another person. These acts, when committed by a person who is either significantly older than the victim or in a position of power to control over another child, may be considered sexual abuse.

29. "Emotionally Abused Child" means a child found to be in one or more of the following situations.
- (a) A child whose parents fail to love, listen, guide or pay attention to him/her.
 - (b) A child who receives no moral, spiritual, or intellectual instruction from the parents.
 - (c) A child who is separated or isolated from other members of the family (locked in or out).
 - (d) A rejected child.
 - (e) A child whose parents have unrealistic expectations from him/her.
 - (f) A child whose parents or others verbally harass, tease, swear at, and/or ridicule the child.
 - (g) A child whose parent(s) have failed to provide the child's basic needs for food, shelter, and clothes.
 - (h) A child whose health is endangered by excessive exposure to alcohol, drugs, tobacco and whose parents do not seek available help for their children.
 - (i) A child whose home life style is dangerous (e.g. excessive drinking, excessive drug use, excessive numbers of people in the house, no food, etc.)
30. "An Exploited Child" means a child who is in one or more of the following situations:
- (a) Forced to work excessively for little or no pay other than normal household duties or chores.
 - (b) A child whose parent(s) misuse any benefits intended for the child including selling or squandering food stamps, commodities, grocery orders, or Women Infants and Children (WIC) food or milk vouchers.
 - (c) A child whose parent(s) consistently fail to maintain food in the household.

31. "An Unruly Child" means a child who is found to be in one or more of the following situations:
- (a) Any Indian child who has deserted his or her home without sufficient cause or who is habitually disobedient to the reasonable and lawful commands of his or her parents, guardians, or other custodians.
 - (b) Any Indian child who habitually associates with dissolute, vicious, or immoral persons, or who is leading an immoral or vicious life.
 - (c) Any Indian child who being required to attend school willfully and habitually absents himself or herself therefrom or who habitually violates the rules and regulations thereof.
 - (d) Any Indian child who is incorrigible.
 - (e) A child who habitually deports himself so as to injure or endanger the health or well-being of himself/herself or others.
32. "A Minor Parent" means any parent under the age of eighteen (18).
33. "Guardian" means a person who has been granted legal custody of a child by the Tribal Court or a Court of appropriate jurisdiction. The person has been granted care, custody, and control of the child by the Court. It includes the rights of legal custody as well as the right to consent to marriage, enlistment in the Armed Forces, major medical, surgical or psychiatric treatment.
34. "Permanent Guardianship" means the Court has appointed a guardian over the child on a permanent basis. Permanent guardianship is an alternative only when adoption and return of the child to the parents is not a possibility.
35. "Legal Custody" means subject to any limitations which may be imposed by the Juvenile Court, a relationship embodying the following rights and duties:
- (a) The right to physical custody of a child.

- (b) The right and duty to protect, train, and discipline a child.
 - (c) The duty to provide a child with shelter, education, and ordinary medical care.
 - (d) The right to determine where and with whom child should live.
 - (e) The right in an emergency to authorize surgery or other extra ordinary care.
36. "Custodian" means the person, persons, agency, or institution responsible for the care and supervision of the child. This also refers to an individual having physical custody.
37. "Guardian Ad Litem" means an individual appointed by the Courts to represent the best interest of the child in an advocacy role.
38. "Foster Care" means the temporary provision of a substitute family for a child for a planned period of time. The substitute family is a licensed or approved foster home.
39. "Permanent Foster Care" means the Court ordered placement of a child in a foster home on a permanent basis. Permanent foster care may be indicated only when return of the child to the parents is not possible after a reasonable period of time, when adoption is not a possibility, when permanent guardianship is not possible and when emancipation is not possible.
40. "A Foster Home" means a home which has been licensed and/or approved by a social service agency according to standards established by the Tribe/Agency.
41. "A Child Placement Agency" means a social service agency or adoption agency approved by the Tribe to receive child for placement or adoption.

42. "Child Custody Proceedings" means any voluntary or involuntary administration or judicial action, which may result in the removal of the child from his/her parent(s).
43. "Termination of Parental Rights" means the voluntary or involuntary severance of parent's rights, duties and responsibilities to a child by the Court.
44. "Emancipation" means the legal action by the Court declaring a child an adult capable of meeting his or her own needs. The Court may emancipate a child upon demonstration to the Court that said child can be responsible in meeting his/her affairs.
45. "Least Restrictive Alternative" refers to the use of the least drastic method of achieving and meeting the needs of the child. This refers to method of intervention in the family, placement needs of the child, educational needs of the child, medical needs of the child, and psychological and emotional needs of the child. Least restrictive alternative shall not be construed to prevent the best interests for the child from being met.
46. "An Expert Witness" means a professional or lay person having a substantial education and/or experiential background in the area of his/her specialty.
47. "Protective Supervision" means a legal status created by court order following a determination of neglect, abuse or dependency, and supervision is provided by a social service agency.
48. "Confidentiality" shall refer to the release of no information regarding an individual(s) without their written consent or the written consent of the parent or legal guardian. The Tribal Court may order the release of such information. This also refers to the responsibility of the social worker or individual investigating a case of abuse/neglect to refrain from revealing the identity and source of the reporter.

49. "Minor In Need Of Care" means any minor adjudged to be in need of placement out of the parental home or in need of treatment or rehabilitation.

5.0103 Rights and Responsibilities

The rights and responsibilities of the natural parent(s) of a child in foster care or in the custody of another person, agency or institution are:

- (a) The right to visitation subject to the Court's modifications in a court order.
- (b) The right to consent to, be informed of, and be involved in determining the medical needs of the child.
- (c) The right to choose the child's religion.
- (d) The right to be involved in planning for the child.
- (e) The right to voluntarily relinquish parental rights in order to free the child for adoption.
- (f) The right to privacy.
- (g) The right and responsibility to assistance and support in obtaining appropriate resources to improve the family's functioning in aiding the return of the child to the family.

5.0104 The rights of the child in foster care or in the custody of another person, agency, or institution other than the natural parents

- (a) The right to visit the natural parent(s) subject to the supervision or limitations set out by the court.
- (b) The right to nurturance.
- (c) The right to food, clothing, and shelter.
- (d) The right to inheritance.
- (e) The right to protection by the child's natural parents or custodian.

- (f) The right to an education appropriate for the child's needs.
- (g) The right to medical care.
- (h) The right to be involved and informed of planning.
- (i) The right to privacy.
- (j) The right to assistance from appropriate resources in meeting his/her emotional, psychological, educational and medical needs.
- (k) The right to be represented by a Guardian Ad Litem in all hearings involving the child's welfare.

5.0105 The rights and responsibilities of the foster parents

- (a) The right and responsibility to be involved and informed of planning for the child.
- (b) The responsibility, with the agency, of providing food, medical, and clothing for the child.
- (c) The responsibility of providing shelter for the child.
- (d) The right to protect the physical being of the child.
- (e) The right and responsibility to meet the emotional needs of the child.
- (f) The right to assistance from the supervising social service agency in meeting the needs of the child.
- (g) The responsibility of keeping the supervising agency informed of the status of the child.
- (h) The responsibility of confidentiality regarding the child and natural parents.

- (i) The right and responsibility of continued education regarding foster parenting, the needs of foster children, and planning for children.
- (j) The right to obtain emergency medical treatment for the child.

5.0106 The rights and responsibilities of the social service agency.

- (a) The right to open and honest communication with the foster parents, child, natural parents, and Courts regarding the welfare of the child.
- (b) The right and responsibility of establishing planning for the child with natural parents, foster parents and Court.
- (c) The responsibility of assisting the natural parent and the foster parents in meeting the psychological, emotional, physical, educational and medical needs of the child.
- (d) The responsibility of assisting the natural parents in seeking and obtaining appropriate assistance in improving the natural family's functioning in order to promote the return of the child.
- (e) The right to sign for emergency medical treatment when the Court or natural parents are unavailable.
- (f) The responsibility of insuring confidentiality of the child, natural parents and foster parents.
- (g) The right to accept and execute the order(s) of the Court as related to children.
- (h) The responsibility of social service to right and further their education to the needs of children and caretakers related to the welfare of children.

5.0107 A medical doctor has legal authority to examine a child suspected of physical or sexual abuse, without consent of the parent or custodian.

Consent of the parent or custodian is not necessary if the parent or custodian is alleged to be the perpetrator of the physical or sexual abuse. The medical doctor shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed, and shall have the same immunity with respect to participation in any court proceeding resulting from such examination.

5.0108 Service Provider.

For the purpose of assisting Families and Children to correct problems occurring in the home or community, the Tribal Court may order the family or legal custodian and/or the child into a treatment program to be rendered by a service provider. A service provider may be a social service agency, mental health, school counselors, and any other agencies or institutions that are deemed qualified by the Tribe or Tribal Court to provide such services needed. This may also include any combination of the above.

5.0109 Child Custody.

In case of divorce full faith and credit will be given to all child custody orders in divorce proceedings by state and other tribal courts. In matters of custody disputes following the divorce decree, the Tribal Court shall enforce that decree or the most recent custody decree. If a new custody petition is allowed, the original decree or most recent decree shall be honored pending a hearing and disposition on the custody of the children.

5.0110 Commitments and Religious Beliefs.

All commitments to institutions or for placement in family homes under this Title 5 shall be, as far as practicable, either to institutions or for placement in family homes of the same religious belief as that of the person so committed or of his parents or to institutions affording opportunity for instruction in such belief.

5.0111 Detention or commitment to adult institution, Contacts with adults.

When any juvenile is adjudicated delinquent under the Turtle Mountain Juvenile Court and it is determined by the Court that the juvenile must be detained or

committed to any institution in which adults are confined, it shall be unlawful to permit such juvenile to come or remain in contact with adults. If a juvenile is waived into adult court for offenses - which if committed by an adult, constitutes a crime, and determination of guilt is proven to the Court - the juvenile is subject to the same incarceration procedures as would be an adult.

5.0112 Inspection of jailor detention center, Notice of findings, Report of Custodian.

The judge of the Juvenile Court of the Turtle Mountain Jurisdiction, at least bi-annually, shall inspect any jailor detention center, which in the preceding calendar year, was used for the confinement of any juvenile. The judge shall note in the record of the Court whether the jailor detention center is a suitable place of confinement for juveniles. The custodian of each jailor detention center shall make such reports as may be required by the Juvenile Court to effectuate the purposes of this section.

5.0113 Counsel - Burden of Expenses.

In every case, the Court shall inform the juvenile and his/her parent(s) and his/her guardian that he is entitled to counsel. In cases where an attorney is requested by the juvenile or his parent or guardian, the burden of expenses for the attorney are the responsibility of the parent or guardian.

5.0114 No limitation authority.

Nothing in this Code 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 health, morals or welfare unless taken into custody.

CHAPTER 5.02
Juvenile Court

5.0201 Juvenile Court Definition.

The Tribal Court, when exercising jurisdiction under this Code, shall be known as the Juvenile Court and any duly appointed judge of the Turtle Mountain Tribal Court when exercising jurisdiction under this Code shall be known as the Juvenile Court Judge.

5.0202 Jurisdiction.

1. The Turtle Mountain Tribal Court shall have exclusive jurisdiction of any child custody proceedings involving a child residing on or domiciled within the boundaries of the Turtle Mountain Reservation and adjacent Tribal lands except where jurisdiction is already vested in the state by existing federal law.
2. The Turtle Mountain Tribal Court shall retain exclusive jurisdiction over children who are wards of the Turtle Mountain jurisdiction, notwithstanding residence or domicile, sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child, which it would have if the child had remained in the Turtle Mountain jurisdiction. Such jurisdiction shall include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law.
3. The Turtle Mountain Tribal Court may petition for a transfer of any court proceeding for the foster care placement of, termination of parental rights, or adoptive proceedings of a Turtle Mountain Indian child not domiciled or residing within the boundaries of the Turtle Mountain Indian Reservation Court, according to the provisions of the Indian Child Welfare Act of 1978.
4. The Court shall have jurisdiction over any Indian child domiciled or residing upon, or found upon the reservation or adjacent tribal lands, or who has been transferred to the Tribal Court under the Indian Child Welfare Act and over all persons having care, custody, and control of such children in the following situations:

- (a) Concerning any child who has violated any Tribal ordinance or resolution within the jurisdiction of the Turtle Mountain Tribe.
- (b) Concerning any child who is neglected, abused, dependent, unruly, exploited, or involved in child custody proceedings.
- (c) Proceedings to terminate the legal parent-child relationship.
- (d) The judicial consent to marriage, employment, and to emergency medical or surgical treatment of the child who is under the custody of the Court.
- (e) Proceedings for the adoption of a child.
- (f) All proceedings to determine the custody of or person of the child.

5. The Turtle Mountain Tribal Court will not have jurisdiction to process juvenile delinquency hearings or adjudications on juveniles who commit delinquent acts outside the jurisdiction of the Turtle Mountain Juvenile Court. Once the Court with the proper jurisdiction adjudicates the child delinquent, tribal follow-up services may be provided on a courtesy basis or the case may be transferred to Tribal Court for dispositional proceedings and all subsequent proceedings.

5.0203 Contempt of Court.

Any willful disobedience or interference with any lawful order of the Juvenile Court constitutes a contempt of court and shall be punished as provided by Section 2.1004 of the Turtle Mountain Tribal Code of 1976.

5.0204 Initiation of Proceedings, Rules of Procedure.

1. Petition.

All court proceedings under this part shall be initiated by a petition declaring the facts of the case. Such petition shall set forth the following information:

- (a) The name and birth date of the youth.

- (b) The name of the parent or custodian of the youth.
- (c) The basis of the Court's jurisdiction.
- (d) An allegation that the child is delinquent, abused, neglected, or deprived youth, or a youth in need of care and a plain statement of facts supporting this allegation.
- (e) Any facts relevant to the present physical or legal custody of the child.
- (f) Whether temporary custody of the child is requested by a social services agency in behalf of the child, and/or family.

2. Commencement of Action.

- (a) Except as otherwise provided below, proceedings in children's cases before the Juvenile Court are commenced by petition.

All proceedings in Juvenile Court shall be closed to the public.

- (b) In the case of violation of motor vehicle or boating laws and ordinances, a petition shall not be required. The issuance of a traffic or other citation or summons shall be sufficient or invoke the jurisdiction of the Juvenile Court; unless the Court shall otherwise order, no preliminary investigation shall be required in such cases.
- (c) Whenever the Court is petitioned by a police officer or any other person alleging that a child appears to be within the Court's jurisdiction, the Clerk of the Court shall notify a probation officer or other designated persons who shall make a preliminary inquiry to determine whether the interests of the public, the Tribe, or the child require that further action be taken. The report on the preliminary investigation shall be filed with the Court without unnecessary delay.

- (d) The Court may, by rule, provide that police reports or reports by other social service related agencies having contact with or custody or supervision over a child, may be filed with the Court in lieu of a preliminary investigation, in which case, further preliminary investigation as provided herein shall not be required unless otherwise specifically ordered.
- (e) As an alternative to filing a petition, the Court may, with the assistance of probation officers or other designated individuals, make such nonjudicial adjustment of the case as is practicable without a petition and proceedings thereunder. Such adjustments shall be made only in cases in which the facts are admitted and establish prima facie jurisdiction in the Tribal Juvenile Court, and further provided that consent is obtained from the parents or other custodians and also from the child, if, in the Court's opinion, he is of suitable age and discretion. Efforts to effect a unjudicial adjustment may not extend for a period of more than six months without the permission of the judge of the juvenile court who may extend such intervention.

3. Petitions, Consent.

The petition may be prepared and filed by a probation officer, police officer, parent, guardian, custodian, BIA Branch of Social Services, or other tribally recognized agency, or any interested party. At any time after a petition is filed, the Court may make an order providing for temporary custody of the child.

4. Examinations.

The court may, upon such conditions of notice and hearing; if any, as it deems best, order that a child concerning whom a petition has been filed, shall be examined by a physician, surgeon, psychiatrist, or psychologist, or mental health social worker, and may place the child in a hospital or other facility for such examination for purposes of substantiation of allegations of child abuse or neglect. The Court may also order an examination of

a parent or guardian whose ability to care for the child is at issue if the court finds from the evidence presented at the hearing that the parents or guardians physical, mental, or emotional condition may be a factor in causing the neglect, dependency, or delinquency, of the child. An examination of a parent or guardian may be ordered only for purposes of custody dispositions.

5. Petitions, Dismissal.

The Court may dismiss a petition at any stage of the proceedings.

5.0205 Summons, Content and Service Thereof

1. Summons, When Required.

After a petition is filed and after such further investigation as the Court may direct, the Court shall promptly issue a summons. No summons is required as to any person who appears voluntarily or who files a written waiver of service with the Clerk of Court at or prior to the hearing.

2. Summons, Content, Requirement.

The summons shall contain the name of the Court, the title of the proceedings and (except for a published summons) a brief statement of the substance of the allegations in the petition. A published summons shall simply state that a proceeding concerning the child is pending in the Court and that adjudication will be made. The summons shall require the person or persons who have physical custody of the child to appear personally and bring the child before the Court at a time and place stated. If the person so summoned is not the parent, parents or guardian of the child, then a summons shall also be issued to the parent(s) or guardian as the case may be, notifying them of the pendency of the case and of the time and place set for the hearing. No summons need be issued to a parent(s) whose parental rights have been terminated.

3. Summons, Other Persons.

Summons may be issued to any person within the jurisdiction of the Court requiring the appearance of any person whose presence the Court deems necessary.

4. Manner of Service, By Who Served.

- (a) Service of summons or process and the petition shall be made by process server as appointed by the Court.
- (b) Service of summons and petition may be made by delivering a copy to the person summoned provided, however, that parents of a child living together at their usual place of abode may both be served personally by delivering to either parent, copies of the summons and petition, one copy for each parent.
- (c) If the judge is satisfied that personal service of the summons and petition is impractical under the circumstances, he may order service by registered mail, with a return receipt requested to be signed by the addressee only, to be addressed at the last known address of the person to be served. Service shall be complete upon return to the Court of the signed receipt.

5. Substituted Service, Jurisdiction.

If the parent, parents, or guardian required to be summoned cannot be found within the jurisdiction of the Court, the fact of their child's presence within the reservation, shall confer jurisdiction on the Court in proceedings in children's cases under this Code as to any parent or guardian; provided that due notice has been given in one of the following manners:

- (a) If the address of the parent or guardian is known, by sending a copy of the summons and petition by registered mail with return receipt requested to be signed by the addressee only, or by personal service outside the reservation. Service by registered mail shall be complete upon the return to the Court of the signed receipt.
- (b) If the address or whereabouts of the parent or guardian outside the reservation cannot be found after diligent inquiry, notice can be given by publishing a summons in a newspaper having general circulation on the reservation. The summons shall be published once a week for

three successive weeks. Service shall be complete on the day of the last publication.

6. Service, Time Requirement.

In the case of the service on the reservation, service completed no less than ten (10) days before the time set in the summons for the appearance of the person served, shall be sufficient to confer jurisdiction. In the case of service outside the reservation, service completed no less than ten (10) days before the time set in the summons for appearance of the person served, shall be sufficient to confer jurisdiction.

5.0206 Guardian Ad Litem.

1. Appointment.

Upon the filing of a petition, in the instance of a deprived child, the Tribal Court may immediately appoint an adult as Guardian Ad Litem, to act as the legal advocate for the child in the proceedings upon the petition and to represent the best interest of the child.

2. Qualifications.

The appointee should not be an individual directly involved in the case before the Court.

3. Duties and Responsibilities of Guardian Ad Litem.

The Guardian Ad Litem, once appointed by the Court, shall have as their primary duty to impartially represent the best interest of the child. The Guardian Ad Litem must submit a report to the Court outlining the results of his/her investigation into the child's situation. The report should include:

- (a) An assessment of the child's present environment.
- (b) Resources which the child requires.
- (c) A description of the child's extended family and the possibility of using it as a resource.
- (d) A description of the family support system.
- (e) A statement requesting an evaluation of the child if it is deemed necessary by the Guardian Ad Litem.

- (f) A statement regarding the child's wishes.
- (g) A statement regarding the Guardian Ad Litem's recommendations.

These duties begin at the time of appointment and end at the time all issues for the Court are resolved.

- 5.0207 Written promise to appear; failure to perform.
A parent, guardian, or custodian may issue a written promise to appear before the juvenile court, which shall constitute sufficient notice and service of notice. Any such person issuing the above promise, who fails to appear without just cause, shall be subject to contempt of court. The written promise shall be filed with the record of the case.
- 5.0208 Conduct of Hearings.
1. Private and closed. All hearings shall be separate from other proceedings and shall be private and closed to the public. Only the parties, their attorneys, witnesses, and other persons requested by the parties and approved by the Court may be present at the hearing.
 2. Denial of Allegations. If the allegations are denied, the Court shall hear the evidence and decide whether or not the allegations were committed.
 3. Admission of Allegations. The Court must find that an admission is voluntarily and knowingly given.
 4. Standard of Proof. The standard of proof shall be clear and convincing evidence.
 5. Dismissal or Disposition.
 - (a) The Court will dismiss the petition if the allegations are not established by the required standard of proof, or
 - (b) The Court will proceed to the dispositional hearing if the allegations are established by a valid admission or by the required standard of proof.

6. Postponement (Continuance). On the Court's motion, or the minor, his parents, guardian, custodian, or attorney, the Court may postpone (continue) the hearing for a reasonable time.
7. Amendment of Pleadings, Continuances. When it appears, during the course of any proceeding in a child's case that the evidence presented points to material facts not alleged in the petition, the Court may proceed to consider forthwith the additional or difference matters raised by the evidence. In such event, the Court, on motion of any interested party or on its own motion, shall direct that the petition be amended to conform to the evidence. The Court shall grant such continuance as justice may require.
8. Proceedings, Civil in Nature. Proceedings in children's cases shall be regarded as civil proceedings with the Court exercising equitable power. Children's cases shall be handled separately from adult cases.
9. Hearings - Record. A verbatim record by either stenographic or electrical or mechanical recording device shall be taken in all cases processed through juvenile court. The Court may destroy such record at its discretion but no sooner than sixty (60) days after the time for appeal has expired. In no event shall a record be destroyed if a case is to be further reviewed by the Court.
10. Use of Juvenile Records.
 - (a) Throughout and upon the completion of the juvenile delinquency proceeding, the records shall be safeguarded from disclosure to unauthorized persons. The records shall be released to the extent necessary to meet the following circumstances:
 - (1) inquiries received from another court of law;
 - (2) inquiries from an agency preparing a pre-sentence report for another court;
 - (3) inquiries from law enforcement agencies where the request for information is

related to the investigation of a crime or a position within that agency;

(4) inquiries, in writing, from the director of a treatment agency or the director of a facility to which the juvenile has been committed by the Court;

(5) inquiries from an agency considering the person for a position immediately and directly affecting the national security; and

(6) inquiries from any victim of such juvenile delinquency, or if the victim is deceased from the immediate family of such victim.

(b) Unless otherwise authorized by this section, information about the juvenile record may not be released when the request for information is related to an application for employment, license, bonding, or any civil right or privilege.

(c) Whenever a juvenile is found guilty of committing an act, which if committed by an adult would be a felony that is a crime of violence, such juvenile shall be fingerprinted and photographed. Fingerprints and photographs of a juvenile who is prosecuted as an adult shall be made available in the manner applicable to adults.

(1) Unless a juvenile who is taken into custody is prosecuted as an adult neither the name nor picture of any juvenile shall be made public in connection with a juvenile delinquency proceeding.

11. Special Rules of Procedure, Traffic Violations. Court may adopt special rules of procedure to govern proceedings involving violations by children of traffic laws or ordinances.

12. Presence of Parents, Protection of Child. The Court shall insure the presence at the hearing of one or both parents or of the guardian of the child.

The Court will appoint a Guardian Ad Litem to protect the welfare of the child, whenever the Court deems it necessary.

13. Maintenances of Order During Hearings. Upon request of the Court, the Captain of Police or his appointee or other officer shall aid the Court in maintaining order during any hearing.
14. Consolidation of Proceedings. When more than one child is involved in a home situation which may be found to constitute neglect/dependency, the proceedings may be consolidated except that separate hearings may be held with respect to disposition. The above provision will not apply to delinquency cases.
15. Hearings, Evidence. For the purpose of determining proper disposition of the child, and for the purpose of establishing the fact of neglect or dependency, written reports and other material relating to the child's mental, physical, and social history and condition, may be received in evidence and must be considered by the Court along with other evidence but the Court may require that the person who wrote the report or prepared the material appear as a witness if he is reasonably available.

5.0209 Actions of the Juvenile Court.

1. General Authority. The Court shall make such orders for the commitment, custody, and care of the minor and take such other actions as it may deem advisable and appropriate in the interest of the minor and the interests of the Tribe.

The Court may request the aid of the Bureau of Indian Affairs and such others as it is deemed appropriate for a proper determination and disposition of the case, including custody or placement of the juvenile. The Court shall utilize such social services as may be furnished by any tribal, federal, or state agency (provided that it is economically administered without unnecessary duplication and expense).

2. Custody of Juvenile Pending Hearing. Pending final disposition of the case, the juvenile shall be

subject to the order of the Court and may be permitted to remain in control of parents, guardians, persons having his custody, or probation officer, or he may be detained in a place provided by the Tribe.

3. Medical Examinations and Care. The Court may order medical examinations and prescribe such care as may be required for juveniles under its jurisdiction.

5.0210 Juvenile Court Clerk, Records Confidential.

The clerk of the Tribal Court shall be the clerk of the juvenile court. He/she shall file all papers, including the findings and final order in proceedings under this chapter, and shall note the date of such filing on the papers. Final orders shall be entered in a book known as the "Juvenile Court Record", which shall be kept exclusively for that purpose. The records and papers shall be subject to examination by said clerk, the judges of the Court, the probation officer, and the juvenile officer. Others may examine such records and papers only under written order of a Tribal Court Judge.

5.0211 Commitments and Judgments.

The Court shall have broad discretionary power with respect to commitments and judgments, and its authority shall include, but is not limited to, the power to commit the juvenile. If the Court shall find that the child is within the provisions of Title 9 and Title 5, it shall so decree and, by order duly entered, may proceed as follows:

1. Place the child under supervision in his own home, or in the custody of a relative or other proper person, upon such terms as the Court shall determine.
2. Commit the child to a suitable private home, suitable private institution or agency or to a suitable school or institution, or he may be detained in a place provided by the tribe; or
3. Order the child into programs as specified by the Court if the child has damaged, destroyed, vandalized, or stolen another person's property. The program will be geared toward paying back the victims of delinquent acts. The Court will also have

the authority to order delinquent children into working in community betterment projects.

4. The Anti-Drug Act of 1986 requires a procedure for the emergency medical assessment and treatment of every Indian youth arrested or detained by the Bureau of Indian Affairs or tribal law enforcement personnel for an offense relating to or involving alcohol or substance abuse. The medical assessment required by this subsection:
 - (a) shall be conducted to determine the mental or physical state of the individual assessed so that appropriate steps can be taken to protect the individual's health and well being,
 - (b) shall occur as soon as possible after the arrest or detention of an Indian youth, and
 - (c) shall be provided by the Indian Health Service either through it's direct or contract health service.
5. Require the parents of the delinquent child or a minor in need of care, especially in status offense cases, to be involved in the treatment process of a child, if it can be clearly shown that the parents of the child are contributing factors in the child's delinquent behavior. The Court requirement of parental involvement can be, but is not, limited to family therapy. Parental factors contributing to delinquency can be, but are not limited to, excessive use of alcohol or drugs by either or both parents, child neglect, or abuse by either or both parents, or incestuous relationships.
6. Order such care and treatment as the Court may deem to be for the best interests of the child. No adjudication upon the status of any child within the jurisdiction of the Turtle Mountain Tribal Court shall operate to impose any of the civil disabilities ordinarily resulting from conviction, nor shall any child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction. The disposition of a child or any evidence given in the Court shall not be admissible as evidence against the child in any case or proceeding in any other court, nor shall such

disposition or evidence operate to disqualify a child in any future civil service examination, appointment, or application. Whenever the Turtle Mountain Tribal Court shall commit a child to any institution or agency, it shall transmit with the order of commitment, a summary of all of its information concerning such child.

5.0212 Removal of Juvenile.

1. The Court may order the removal of a juvenile from his parents or legal guardian, but no such order shall be made without first giving ten (10) days notice to the parents or guardian, unless the parents, guardian, or Court consents to an earlier removal. It is the intention of this Code that no juvenile shall be removed from his parents or guardian any longer than is reasonably necessary to preserve the welfare of the juvenile and the interests of this jurisdiction.
2. Orders, Termination, Reviews. An order vesting placement of a child in an individual agency, or institution shall be for an indeterminate period, but shall not remain in force longer than 1 1/2 years from the date it is entered unless, within the 1 1/2 year period, the Court after notice to the parties and a hearing, shall extend its order for a 1 1/2 year period. The findings of the Court and the reasons therefore shall be entered into the record with the review order or with the order denying renewal.
3. Search Warrant.
 - (a) The Court may issue a warrant authorizing a police officer to search for a minor if there is probable cause to believe that a minor is within the Court's jurisdiction.
 - (b) If it appears to the Court upon an affidavit sworn to be a police officer or any other person, and upon the examination of other witnesses if required by the Court, that there is probable cause to believe that a child is being detained or ill-treated in any place within the jurisdiction of the Court, the Court may issue a warrant authorizing a duly authorized police officer to search for the

child. Upon serving such warrant upon the person in possession of the premises specified in the warrant, the officer making the search may enter the house or premises, if necessary by force, in order to remove the child. The officer must thereupon take the child to the Court or to place of detention or shelter designated by the Court.

4. Minors In Need Of Care

- (a) Emergency custody order (ex parte custody order). The Court may issue an emergency custody order (ex parte custody order) upon a sworn written statement of facts, showing probable cause exists to believe that a minor is a minor in need of care; or
- (b) Search Warrant. The Court may issue a warrant authorizing a police officer to search for a minor if there is probable cause to believe that the minor is within the Court's jurisdiction and an emergency custody order has been issued for the alleged minor in need of care.

5. Retake (Arrest) Warrant. The Court may issue a retake (arrest) warrant directing that a minor be taken into custody if the Court finds probable cause to believe the minor has violated the terms of his probation.

5.0213 Transfer to Adult Court.

The Court may, in its discretion, allow prosecution of any delinquent juvenile, fifteen (15) years or older in accordance with the laws of the Turtle Mountain Jurisdiction, governing the commission of crimes within the jurisdiction of the Tribal Court. In such cases, the petition filed under this Code shall be dismissed, a criminal complaint shall be filed.

5.0214 Judgments of Support.

The person or persons required by law to support the juvenile may be ordered by the Court to pay to the guardian or institution a reasonable sum for the support, maintenance or education of such juvenile. No order shall be issued unless such person or persons are able to contribute to the juvenile's support. Such

orders shall have the force and effect of judgments for money and shall be enforceable as such.

- 5.0215 Order Relating to Judgments of Support
If the person or persons so ordered to pay for the support, maintenance, or education of a dependent, neglected, or delinquent juvenile shall be employed for wages, the Court may order that the sum to be paid by him shall be withheld from his wages and paid directly to his guardian or institution.
- 5.0216 Periodic Reports.
The Court shall require the probation officer, guardian, or institution to furnish such periodic reports concerning the juvenile committed to its care custody and control as the Court may deem necessary or desirable.
- 5.0217 Removal From Reservation.
The Court may permit removal of a neglected dependent or minor in need of care juvenile from the reservation by the person or institution in whose custody the juvenile is given, on condition that such custodian produce the juvenile when required by the Court. The Turtle Mountain Tribal Court remains the Court of original jurisdiction. In its discretion, the Court may require a cash or surety bond to insure that the custodian will return the juvenile on order of the Court.
- 5.0218 Custody of a Juvenile Arrested for Violation of Law.
As officer of the law, other than the probation or juvenile officer, who arrests a juvenile for violation of law, forthwith shall notify the probation or juvenile officer of the arrest and shall place the juvenile in such custody as the probation or juvenile officer directs, pending hearing by the Court.
- 5.0219 Taking a Child Into Custody.
A child may be taken into custody:
1. Pursuant to an order of the Court.

2. Pursuant to the laws of arrest.

3. By a law enforcement officer or probation officer if there are reasonable grounds to believe:
 (a) That the child is suffering from illness or

injury or is in immediate danger from his surroundings; and that his removal is necessary.

- (b) That the child has run away from his parents, guardians, or other custodian.

The taking of a child into custody is not an arrest. The person taking the child into custody shall immediately notify the child's parents, guardian, or other custodian and release the child to them.

5.0220 Basic Rights.

The Miranda Warning will be required only when the child is being asked questions about a delinquent act. The child, however, may obtain an attorney at any time. The parents, guardian, or custodian must be present before questions may be asked about the delinquent act.

5.0221 Minors In Need Of Care, Right to An Attorney.

Anytime a minor is in need of care and a court proceeding is held, the minor shall be informed of his or her right to an attorney.

5.0222 Place of Detention or Shelter Care.

1. Juvenile Offender. A child alleged to be a juvenile offender may be detained, pending a hearing in the following places:

- (a) A foster care facility on the reservation licensed or approved by the tribe; or
- (b) A detention facility on the reservation approved by the tribe; or
- (c) A private home on the reservation approved by the tribe.

2. Minors In Need Of Care. A minor in need of care may be detained pending a hearing, in the following places:

- (a) A foster care facility on the reservation licensed or approved by the tribe; or
- (b) A private family home on the, reservation approved by the tribe; or

(c) A shelter care facility on the reservation approved by the tribe.

3. Anti-Drug Act of 1986 - Referral for alcohol and substance abuse.

(a) In any case where an Indian youth is arrested or detained by the Bureau of Indian Affairs or tribal law enforcement personnel for an offense relating to alcohol or substance abuse, other than for a status offense as defined by the Juvenile Justice and Delinquency Prevention Act of 1974, under circumstances where such youth may not be immediately restored to the custody of his parents or guardians and where there is space available in an appropriate licensed and supervised emergency shelter or half-way house, such youth shall be referred to such facility in lieu of incarceration in a secured facility unless such youth is deemed a danger to himself or to other persons.

(b) In any case where there is a space available in an appropriately licensed and supervised emergency shelter or half-way house, the Bureau of Indian Affairs and tribal courts are encouraged to refer Indian youth convicted of offenses directly or indirectly related to alcohol and substance abuse to such facilities in lieu of sentencing to incarceration in a secured juvenile facility.

4. Exceptions. An alleged juvenile offender may be detained in a jailor facility used for the detention of adults only if:

(a) If a facility as described Section 5.0222, Subsection would not provide adequate in (a), (b), & (c) of (1) is not available or restraint of the minor;

(b) Detention is in a cell separate from adults, and

(c) Adequate supervision is provided twenty-four hours per day.

5.0223 Standards for Shelter Care and Detention Facilities.
1. Rules and Regulations. The Chief Tribal Judge shall

adopt written rules and regulations governing the operation of detention and shelter care facilities. The Chief Tribal Judge may assign the responsibility to another qualified tribal agency.

2. Content of Rules and Regulations. The rules and regulations shall include but are not limited to the following:

- (a) Cleanliness standards
- (b) Heat, water, and light standards
- (c) Personnel standards
- (d) Visiting privileges
- (e) Occupancy standards
- (f) provisions for medical and dental care
- (g) Provisions for food, clothing, and other personal items

- 5.0224 Juvenile Detention, Hearing Limitation.
Any juvenile arrested for a violation of law must have a hearing within forty-eight (48) hours to decide if further detention is warranted. If further detention is warranted, the Court may impose commitments and judgments under Section 5.0211 of this Code. If further detention is not warranted, the child must be released immediately.
- 5.0225 Photos and Fingerprints, Juvenile Restrictions.
No juvenile shall be photographed or fingerprinted by law enforcement authorities unless permission is granted by the Court or unless conditions as specified in Chapter 5.0208, Section 10, Subsection 3 applies.
- 5.0226 Juvenile Hearing, Restrictions, Non-punitive.
Juvenile hearings are non-punitive in nature and are afforded confidentiality, therefore, no hearing with a juvenile will involve a jury or any of the punitive practices afforded an adult.
- 5.0227 Written Judgment.
The Court shall enter a written judgment setting forth the findings, decision, and disposition. No judgment,

order or decree of the Tribal Juvenile Court shall operate after the child becomes 18 years of age unless the Court deems that it is in the best interests of the individual or the Tribe to continue its jurisdiction.

5.0228 Modification, Revocation, or Extension of an Order.

1. Upon motion. The Court may modify, revoke, or extend an order at any time upon the motion of the following:
 - (a) The minor.
 - (b) The minor's parents, guardians, or custodian;
or
 - (c) The agency having placement authority.
2. Hearing. A hearing to modify, revoke, or extend a court order shall be conducted.
3. Automatic Termination. When a juvenile offender or minor in need of care reaches eighteen (18) years of age, all judgments affecting the minor shall automatically terminate unless the child is under the supervision of the Court. Court supervision can continue beyond the age of eighteen (18) years of age.
4. Orders, Modifications. The Court may modify or set aside any order or decree made by it, but no modification of an order will be made until there has been a hearing conducted with proper notice to all persons concerned. Notice and a hearing shall also be required in any other case in which the effect of modifying or setting aside an order, may be to deprive a parent of the legal custody of the child, to place the child in a child care facility, or agency. Transfer from one foster home to another may be affected without notice and hearing.
5. Orders of Termination, Notice. Notice of an order terminating probation or protective supervision may be given to the parents, guardian, custodian, and where appropriate to the child.
6. Court Adjudication. Not criminal in nature.

- 5.0229 Full Faith and Credit.
The Court shall give full faith and credit to state and other tribes child custody court orders as defined by the Indian Child Welfare Act 25 USC S 1911 (d). This shall include all divorce custody matters, which have been settled in courts of appropriate jurisdiction.
- 5.0230 Law Enforcement Records.
1. Record. Law enforcement records and files concerning a minor shall be kept separate from the records and files of adults.
 2. Confidentiality. All law enforcement records and files shall be confidential and shall not be open to inspection to any but the following:
 - (a) The Judge
 - (b) Probation and parole officer
 - (c) Juvenile officer
 - (d) The prosecutor
- 5.0231 Informal Adjustment Hearing.
1. When allowed. The Court may appoint a hearing officer and may hold an informal conference with the minor and the minor's parents, guardian, or custodian to discuss alternatives to the filing of a petition if:
 - (a) The admitted facts bring the case within the jurisdiction of the Court.
 - (b) An informal adjustment of the matter would be in the best interest of the minor and the Tribe; and
 - (c) The minor and his parent, guardian, or with knowledge that the consent is voluntary.
 2. Alternatives.
 - (a) Refer the minor and parent, guardian, or custodian to a community agency for needed assistance.
 - (b) Order terms of supervision, calculated to assist and benefit the minor, which regulate

the minor's activities and which are within the ability of the minor to perform.

(c) Accept an offer of restitution if voluntarily made by the minor; or

(d) Recommend that a petition be filed.

3. Written agreement to informal adjustment.

(a) Content. The hearing officer shall set forth, in writing, the agreements and conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying the situation.

(b) Time limit. An informal adjustment period shall not exceed six (6) months.

(c) Review. The hearing officer shall review the minor's progress every thirty (30) days. If at any time after the initial thirty (30) day period, but before the end of the six (6) months, the hearing officer concludes that positive results are not being achieved, the hearing officer shall recommend that the juvenile officer or probation officer file a petition.

5.0232 Commitment to Off Reservation Placements.
Tribal Court shall have authority to commit any child adjudged delinquent to off reservation placements.

Chapter 5.03 Appeal

5.0301 Procedure of Appeals.
An appeal to the Tribal Appeals Court may be taken from any order, decree, or judgment of the Tribal Juvenile Court. Such appeal shall be taken in the same manner in which appeals are taken from judgments or decrees of the Tribal Court.

5.0302 Stay pending Appeal.
Unless the Court stays its order, the pendency of an appeal shall not stay the order or decree appealed from in a child's case. Where the order or decree appealed from directs a change of legal custody of a

child, the appeal shall be heard and decided at the earliest practicable time. The name of the child shall not appear on the record of appeal.

5.0303 Record.

For purposes of appeal, a record of the proceedings shall be made available to the minor, his parents, guardians, or custodian. Costs of obtaining this record shall be paid by the party seeking the appeal.

5.0304 Time Limit.

Any party to a court hearing may appeal a final order or disposition of the case by filing a written notice of appeal with the court within thirty (30) days of the final order of disposition.

5.0305 Conduct of Proceeding.

All appeals shall be conducted in accordance with the Tribal Court.

**Chapter 5.04
Indian Child Welfare Act of 1978**

5.0401 Transfer from State Courts.

The Turtle Mountain Tribal Court may accept or decline State Court transfers of child custody proceedings. The purpose of this section is to provide for the speedy and effective procedures for the processing of referrals under the Indian Child Welfare Act of 1978 from State or Tribal Court, in order to best protect the interest of children of the Turtle Mountain Tribe and the interests of the Tribe. It is intended that the Tribe will investigate cases referred to them and will act to transfer to the Tribal Court those cases in which transfer is in the best interests of the child. The procedures found in this section are aimed at producing a thoughtful and wise decision in the matter of transfers.

5.0402 Receipt of Referrals.

Receipt of cases shall be received by the person or persons who shall be designated by the Turtle Mountain Tribe to receive such referrals. Upon receipt of referral, the person so receiving shall immediately deliver the referral to the Chief Judge of the Tribal Court, or in the absence of the Chief Judge, to some other Judge of the Tribal Court.

5.0403 Duties of the Clerk of Court.

The Clerk of the Tribal Court, upon receipt of such a referral by a Tribal Judge, shall document in a record all essential information relevant to the referral, including:

1. The source of the referral.
2. The names and addresses of the child and parent, guardian, and custodian.
3. The date of the referral; and
4. The form of the scheduled proceedings in the outside Court.

5.0404 Duties of the Chief Judge of the Tribal Court.

The Chief Judge of the Tribal Court, or such other Judge as the Chief Judge shall designate, shall receive the referral and, in consultation with the designated committee where practicable, shall immediately determine and direct the Tribal designee whether to request of the referring court the 20 day extension necessary to prepare the case, if necessary.

5.0405 Investigation of Referral.

Upon receipt of referral and request of the twenty (20) day extension, the Chief Judge shall investigate the referrals or direct appropriate tribal personnel to assist in the investigation. The investigation shall include the following:

1. Contact appropriate sources to determine the child's membership and tribal status.
2. Investigate and determine whether the child custody referral is one properly referred to the Tribe under the Indian Child Welfare Act.
3. Contact the parent, guardian, or custodian, in proper cases, of the child, by registered mail with return receipt requested and notify them of the fact of referral to the Tribe and the Tribe considering transfer of the case to the Tribal jurisdiction.
4. Contact social, medical, legal, or other such sources to obtain necessary information regarding the circumstances of the case.

5. Make a decision as to whether the transfer of the cases would be appropriate and in the best interest of this child. The Court may consider the past and present residence of the child, the child or the child's family's ties with the Tribe or the Tribal community, and special conditions of the child in the ability of tribal or reservation facilities to deal with such conditions whether jurisdiction should be taken before or after the adjudication stage of the proceedings, considering the location of the witnesses, documents, and other evidence and the existence of subpoena and other process limitations of tribal jurisdictions.
6. Continuity in the child's surroundings and emotional contact.
7. The wishes of the child's family, extended family, and other interested persons.
8. Notify the parent, guardian, or custodian of the child, and all other interested parties having contacted the Tribal Court, of the decision regarding transfer. Notification to parent, guardian, or custodian shall be by registered mail, addressee only, return receipt requested.
9. If the Chief Judge of the Tribal Court shall determine that the transfer is in the best interests of the child, the Chief Judge shall file, or cause to be filed, a petition with the referring court for transfer of jurisdiction to the Tribal Juvenile Court.
10. Determine whether, without transfer, the Court should intervene in the proceedings in the referring Court, and if so, cause such intervention procedures to be initiated.
11. If the intervention and transfer of such case is in the best interest of the child, the Turtle Mountain Tribe shall adopt a resolution requesting the proceeding in the matter of the Indian child be transferred to the Turtle Mountain jurisdiction.

The Chief Judge of the Tribal Court shall complete the above duties within ten days after receiving the notice of referral, unless request has been made, in writing by registered mail, for twenty (20) day extension as provided in Indian Child Welfare Act.

5.0406 Proceedings Upon Transfer.

When transfer of a case has been made by a referral court, the Chief Judge of the Tribal Court shall immediately notify Social Services or a probation officer, and a petition under Section 5.0204 of this Code shall be filed at the earliest practicable date.

**Chapter 5.05
Probation Officer**

5.0501 Appointment of Probation Officers.

The Turtle Mountain Tribal Council shall have authority to employ any number of responsible persons of good moral character to serve as probation officers. All such officers will take an oath as may be required by the Tribal Council to perform their probationary duties. Such oath and order of the appointment will be filed with the Tribal Clerk of Court. Probation officers shall possess all the power and authority of Tribal or Bureau of Indian Affairs police officers in performing any duties, which may be incident to the performance of their probationary duties.

5.0502 Removal of Probation Officers.

If warranted and documented, disciplinary action may be taken, to include dismissal against probation officers by a judge of the Turtle Mountain Tribal Court, if the probation officer is involved in a violation of tribal, state, or federal law. Probation officers may also be removed for nonperformance of their duties prescribed by the Turtle Mountain Tribal Code. A hearing by a judge of the Turtle Mountain Tribal Court will be held in a dismissal action, if requested by the probation officer with a right of appeal by both sides of the action of the Turtle Mountain Tribal Court of Appeals. In all cases, the decision of the Court of Appeals will be final.

5.0503 Job Description.

Responsible for performing field work in the supervision and rehabilitation of both adjudicated adult and juvenile probationers and parolees on personal, social, financial, family, employment, and psychological problems, works with community groups, and community law enforcement authorities in establishing and coordinating community projects.

5.0504 Duties of probation Officers.

Probation Officers shall:

1. Supervise adjudicated probationers and parolees, both adult and juvenile.
2. Make investigations and file petitions for juveniles and adults under the supervision of the probation office.
3. Prepare pre-sentence reports for the Court with information such as the Court may require.
4. Be present in Court when cases are heard concerning juveniles.
5. Recommend a probation or parole plan to the Court for suggested disposition of a case.
6. Implement a probation or parole plan including recommendations for return to the Court for a violation of probation or parole, or for termination of supervision if the situation demands revocation of supervision.
7. Furnish any such related services as the Court may require.

Chapter 5.06
Delinquency Prevention Commission

- 5.0601 Establishment, Support and Maintenance; Composition.
The Tribal Council shall provide for the establishment, support, and maintenance of a delinquency prevention commission, composed of not fewer than seven (7), but not more than ten (10) Tribal members to coordinate the works of those governmental and nongovernmental organizations engaged in activities designed to prevent juvenile delinquency within the Turtle Mountain Jurisdiction.
- 5.0602 Members' Appointment--Terms, Expenses, Vacancies.
Members of the delinquency prevention commission shall be appointed by the Tribal Council to serve a term of four (4) years. They may be reimbursed for their necessary expenses incurred in the performance of their duties. Upon a vacancy occurring in the membership of the commission, a successor shall be appointed by the Tribal Council to hold office for the unexpired term of his predecessor.

Chapter 5.07
Reporting Child Abuse and Neglect

- 5.0701 Purpose.
It is the purpose of this chapter to protect the health and welfare of children by encouraging the reporting of children who are known to be or suspected of being abused or neglected and to encourage the provision of services which adequately provide for the protection and treatment of abused and neglected children and to protect them from further harm.
- 5.0702 Basis for Report.
Persons who have reasonable cause to suspect that a minor child has been abused or neglected shall report the abuse of neglect.
- 5.0703 Mandatory Reporting Requirements.
The following classes of individuals must report suspected child abuse or neglect to tribal social services:
(1) physicians, nurses, medicine men and women;

- (2) social workers, employees of tribal or federal social service agencies and health agencies, alcohol and drug counselors, domestic violence program workers, clergy or priests, traditional spiritual advisors;
- (3) police officers and corrections officers (jailers);
- (4) teachers and school administrators;
- (5) day care providers whether licensed or not;
- (6) court prosecutors and judges of the tribal court;
- (7) members of the Turtle Mountain Tribal Council; and
- (8) members of the Turtle Mountain Judicial Board.

5.0703.1 When Must They Report.

When those mandated by law to report have reason to know or suspect child abuse or neglect has occurred and have obtained this knowledge or suspicion in the scope of their employment or professional capacity.

5.0704 Who is Encouraged to Report.

Any individual who knows of or suspects a child to be abused or neglected is encouraged to file a report.

5.0705 Confidentiality of Reporter, Immunity from Legal Liability.

Any person, other than the alleged perpetrator, acting in good faith in the making of a report of child abuse or neglect, or in providing protective services under this Code, is held immune from any liability, civil or criminal, that otherwise might result. For the purposes of this section, the good faith of any person mandated to report cases of child abuse or neglect shall be presumed. Any information regarding the source of the child abuse or neglect report shall be kept confidential, and identity of the reporter shall not be disclosed.

An individual who willfully makes a false report or provides information they know or should have known to be false is liable in a civil action for treble damages including exemplary damages.

5.0706 To Who Reported.

All persons mandated or permitted to report cases of known or suspected child abuse shall immediately file oral and/or written reports surrounding the circumstances with the Bureau of Indian Affairs Branch of Social Services for any Indian child whose home is located on the Turtle Mountain Indian Reservation, or located on tribal jurisdiction. In the event the Indian child's family residence is not located on Turtle Mountain Indian Reservation or on tribal jurisdiction, such report shall be filed with the Rolette County Social Service office.

5.0707 Penalty for Not Reporting.

Any person required by this chapter to report or investigate a case of known or suspected child abuse who willfully fails to do so is guilty of an offense and upon conviction thereof shall be sentenced to labor for a period of not to exceed thirty (30) days or to a fine not to exceed one hundred dollars (\$100.00) or to both such imprisonment and fine, with costs.

Any individual required to report a suspected case of child abuse or neglect fails to do so and is not subject to the criminal jurisdiction of the Turtle Mountain Tribe shall be civilly liable for damages proximately caused for that failure.

5.0708 Investigation of the Report

Upon receipt of a report of suspected child abuse or neglect, the Office of Tribal Social Services in cooperation with Bureau of Indian Affairs or tribal law enforcement shall conduct a joint investigation. If a statement of a suspect is obtained by law enforcement, a copy of the statement shall be provided to Tribal Social Services. Should a disagreement develop between social services and law enforcement, which significantly impedes the investigation, the tribal prosecutor shall conduct the investigation. Investigation shall consist of the following criteria:

1. Respond promptly to report of alleged neglect, abuse of exploitation of the child to determine validity of the report.

2. Assess the damage to child resulting from neglect or abuse.
3. Evaluate the risk of further injury to the child in the home and determine whether the child should remain in the home or whether emergency action is required.
4. Determine and identify the family problem or problems, which contributed to or resulted in neglect or abuse.
5. Evaluate the potential for treatment of the underlying factors to correct conditions and rehabilitate the family.
6. Plan a course of treatment calculated to stabilize and rehabilitate the family through services of the protective agency and the use of other appropriate community resources and services to meet special needs of the children and parent.
7. Initiate the treatment plan and stimulate involvement of services from community resources to meet identified special needs.
8. Invoke the authority of the Tribal Court in situations where there is risk to the child should he/she remain at home, or where there is active resistance to child protective intervention.

5.0709 Emergency Removal.

1. If from the investigation it shall appear that there is probable cause to believe that the child is in immediate danger, and that danger cannot be removed, emergency removal from the home should be considered. An emergency placement of the child from its own family should be considered in the following types of situations:
 - (a) The abuse or maltreatment in the home, present or threatened, is such that the child could suffer serious injury to body or mind if left there.
 - (b) The child is in need of immediate medical or psychological care, which the parent/caretaker refuses to obtain.

- (c) A child's age, physical, or mental condition renders him or her incapable of self protection.
2. Authorization and duties of the BIA/Tribal police and social services. In any case where a BIA/Tribal police officer or social worker has reasonable grounds to believe that an Indian child is in danger of serious and imminent physical or emotional harm and that the removal of the child from the child's home or residence is necessary to avoid such harm, and if the Court is unavailable to issue a custody order, or if the issuance of a custody order would involve a delay which could contribute to the risk of harm to a child, the police officer or social worker may take the child into emergency protective care.
 3. Procedure Upon Emergency Removal of Child. Upon the emergency removal of an Indian child into emergency protective care, the BIA/Tribal police officer or social worker shall:
 - (a) Immediately notify the child's parents or custodian of such removal, and the reasons therefore. If attempts to so notify the child's parents or custodian are unsuccessful, then immediate notifications shall be made of the child's nearest relatives.
 - (b) Immediately notify the Social Service Agency designated to take such notice.
 - (c) If the return of the physical custody of the child can be accomplished without danger of such harm to the child, the child shall be returned to the parent or custodian.
 - (d) If the return of the child to the child's parent or custodian is impossible or would involve continued risk of such harm to the child, then the child shall be placed in the physical custody of a responsible adult member of the child's extended family if such a person is available, and placement can be accomplished without risk of such harm to the child.

- (e) If temporary protective care as set forth above is not available, then the child shall be placed with a secure home, family, or shelter-care facility having been approved for such placement by Social Services. In no case shall such a child be placed in a jail facility or other detention facility where the child is in contact with adults for the reason of having been accused or convicted of a crime.
- (f) Make and deliver a written report, containing the circumstances surrounding the emergency protective care and the basis therefore, to the Tribal Court before the end of the next working day of the Court.

4. The Turtle Mountain Tribal Court may consider and order the emergency removal of a perpetrator of child abuse and neglect from a home, in cases where removing the child would have an adverse effect on the emotional health and well-being of the child. This emergency removal may be accomplished by a restraining order or protective custody proceedings.

5.0710 Immediate Custody of Child.

If it appears, from an affidavit or sworn statement presented to the Tribal Judge, that the welfare of the child requires immediate protection, the Judge may endorse an emergency order for placement of the child in a facility or with an agency as designated by the Court.

5.0711 Emergency Custody of Child.

If it appears that a child is in danger for whatever reason and the Court is unavailable to issue an emergency order, an officer of the Court including a police officer, a probation officer, or a social worker may make an emergency removal of a child and arrangements for appropriate medical shelter care if such removal is deemed necessary for the welfare of that child. Such removals shall be done on an emergency basis only. The officer and/or worker who makes an emergency removal of a child shall submit a written report on the incident along with the petition for a custody order before the end of the next working day of the Court.

- 5.0712 Termination of Emergency Protective Care.
In no case shall emergency protective care extend beyond seventy-two (72) hours. At the expiration of this period, the Court shall:
1. Cause the child to be returned to the child's parents or guardian, or
 2. Cause to be filed with the Tribal Court, a petition for declaration of an abused/neglected or deprived child, in need of care, requesting temporary custody of the child pending proceedings upon the petition, as set forth in this part. Such petition shall be accompanied by a copy of the written report of the person taking the child into emergency protective care, setting forth the findings of the social service investigation into the case and the basis for Social Services request for temporary custody.
- 5.0713 Cooperation Required.
All law and order officials, Tribal Court, and appropriate social service and health agencies, schools, and others shall cooperate in fulfillment of the purposes of this Section of the Code.
- 5.0714 Interviewing the Child.
When validation of a report of child abuse, neglect, or exploitation can be accomplished only through an interview with the child, this contact may take place in the school, hospital, other medical facility or child care facility, with private access to the child facilitated by the administrator/officer who is presumed acting in good faith.
- 5.0715 Disclosure of Information.
During the process of investigation, there may be need to gather information such as school records, police records, medical records, photographs, and records of other agencies. Such information shall be requested of the administrative officer of the facility, with civil immunity afforded such administrator/officer who is presumed acting in good faith.
- 5.0716 Protective Custody by a Physician.
Any physician examining a child with respect to whom abuse or neglect is known or suspected, after

reasonable person having responsibility for the care of the child, may, if it appears that the child's health is in danger, keep the child in the custody of the hospital or medical facility for a period of time not to exceed ninety-six (96) hours. He must immediately notify the Tribal Court in order that the child protective proceedings may be initiated.

- 5.0717 Emergency Medical Treatment and/or Examination.
Upon the sworn testimony of one or more reputable physicians, the Tribal Court may order emergency medical or surgical treatment which is immediately necessary for a child concerning whom a petition has been filed; pending the services of summons and petition upon his parents, guardian, or custodian.
- 5.0718 Legal Authority.
Is granted by this Code to the physicians, to examine any child suspected to be physically/sexually abused and/or neglected without written or verbal consent of the parent/custodian in the event the parent/custodian is alleged to be the perpetrator or refuses such exam.
- 5.0719 Photographs and X-Rays.
Any person or official required by this Code to report known or suspected child abuse, neglect, or deprivation, may cause to be taken color photographs of the areas of injury visible on a child who is the subject of a report, and if indicated by medical consultations, cause to be performed a radiological examination of the child without the consent of the child's parents or guardian.
- All photographs taken pursuant to this section of the Code shall be taken by or under the direction of law enforcement officials upon the request of any person or official required to report under this Chapter. All photographs or x-rays taken, or copies of them, shall be made available to the Tribal Court at the time of the Court hearing.
- 5.0720 Registry of Reports.
The Office of Tribal Social Services shall maintain a registry for the records of cases involving allegations of child abuse or neglect, which are deemed to be substantial after investigation. Records of unsubstantiated cases shall be destroyed after

three (3) years. During this three-year period, the records of unsubstantiated cases shall be sealed but made available under court order should a civil case be filed based upon a false report due to malice or attempt to deflect personal responsibility.

5.0721 A prosecution for the sexual abuse child, Statute of Limitations.

A prosecution for the sexual abuse of a child where the victim was under eighteen (18) years of age at the time the offense was committed must be commenced in Tribal Court within seven (7) years after the commission of the offense. If the victim failed to report the offense within this limitation period, the limitation is three (3) years after the offense is reported to law enforcement authorities. If the victim was under the age of fifteen at the time of the commission of the abuse, the seven-year limitation does not begin to run until the victim has reached the age of fifteen. If the defendant leaves the jurisdiction of the Tribal Court after the offense has been committed, the only applicable limitation is that the complaint must be filed within seven (7) years of the act of seven (7) years of when the victim turns fifteen (15) years of age. No time during which the defendant is not an inhabitant of, or usually resident within, this tribal jurisdiction, is part of the limitation.

Chapter 5.08

Permanent Planning

5.0801 Permanent Planning.

Is based on the premise that each child has a need and right to a permanent home. In accordance with the Indian Child Welfare Act of 1978, the primary goal of permanency planning is the maintenance of the family and reunification of the biological family. Permanent planning shall begin with the efforts of the social worker and Court in their initial contacts with the family. Every effort is made to provide services to the family and child with the goal of keeping the family intact.

5.0802 Protective Supervision.

When the Court becomes involved, it may order a service plan for the family intended to keep the family intact. If the services of the social worker and Court are refused by the family or the family is incapable of making changes necessary for the welfare of the children or the child is at risk by remaining in the home, the Court shall order that the child be placed outside of the family home. This shall be supported by clear and convincing evidence and testimony of a qualified expert witness.

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 to meet the Indian child's needs.

5.0803 Permanency Plan.

Upon placement of the child outside of the biological parent(s) home, the Court shall, with input of the social worker and parents, establish a service plan directed towards correcting the causes of the children's removal and reunification of the family. Such plan shall be reviewed with the Court, social worker, and biological parents within a three (3) month period of time. At this time, progress of the service plan will be reviewed and modified as needed. At the end of another three (3) month period and again as needed, the service plan will be reviewed and modified as needed.

5.0804 Time Frame for Permanency Plan.

At the end of a two (2) year period of time from the date of placement, a permanent plan for the child shall be in effect. If a permanent plan is not in effect, the Court must show just cause as to why a permanent plan should not be put into effect within three months, and steps shall be implemented to

complete the permanent plan within that three month period of time.

5.0805 Review of Permanency Plan.

If a preponderance of the evidence demonstrates that the biological parent(s) or legal guardian (custodian) will not or cannot make changes necessary for the reunification of the family at any time prior to two (2) years, the Court must show cause as to why a permanent plan for the children should not be put into effect within three (3) months and steps shall be implemented to complete the permanent plan within three (3) months of time.

5.0806 Permanent Planning Preference.

In order of preference, shall include the following:

1. Primary goal of reunification of family.

(a) If reunification is not possible, then termination of parental rights and placement of the children in a pre-adoptive or adoptive home. A termination of parental rights order must be supported by evidence beyond a reasonable doubt and testimony of a qualified expert witness that the continued custody by the parent, custodian, is likely to result in serious emotional or physical harm to the child. The order of preference for a pre-adoptive home shall be the same as for foster care placement preference. The preference for adoptive placements in absence of good cause to the contrary shall be: A member of the child's extended family.

(b) Other members of the child's Tribe.

(c) Other Indian families.

2. Legal Guardianship. In the absence of good cause to the contrary, shall have the same order of preference as for adoptive placement.

3. Long-term foster care can be a voluntary agreement between the biological parent(s), court, foster parents, child, and social services stating that the child shall remain in a specific home until the child reaches his/her 18th year or longer if the parties so desire. The court may also order long-

term foster care with the agreement of social services, the foster parents, and the child.

4. Emancipation of the child based upon conditions outlined in the definition of emancipation.

5.0807 Establishment of Permanent Plan.

In determination of establishment of permanent plan, the following factors need to be taken into account:

1. The family's ability and willingness to accept and follow through with remedial and rehabilitative services.
2. The family's ability to meet the child's specific needs, i.e. physical, emotional, psychological, medical, and educational, and ability to safeguard the child's being.
3. The child's age.
4. The child's abilities.
5. The child's needs, i.e. physical, emotional, psychological, medical, and educational.
6. Availability of resources to meet the child's needs.
7. Bonding ties and relationship of child with biological parents and foster parents.

In all work with the family, the least disruptive method shall be taken into account. In all placements by a child placement agency, the least restrictive alternative and the best interests of the child shall be taken into account.

Chapter 5.11
Education and Health

5.1101 Compulsory Attendance.

Every parent, guardian, or other person who resides within the Turtle Mountain Jurisdiction and has control over any educable child of an age of seven years to eighteen who does not fall under the provisions of Section 5.1102 shall send or take such child to a public school each year during the entire time such school is in session.

5.1102 Compulsory Attendance - Exceptions.

The parent, guardian, or other person having control of a child required to attend school by the provisions of this chapter shall be excused by the school board from causing the child to attend school whenever it shall be shown to the satisfaction of the board, subject to appeal as provided by law that one of the following reasons exist:

1. That the child is in attendance for the same length of time at a parochial or private school approved by the Tribal Court.
2. That the child has acquired the branches of learning taught in the public schools and has completed high school.
3. That the child actually is necessary to the support of his family, which shall be a question of fact to be determined by the governing board of the district, and such determination shall be subject to review by the Tribal Court.
4. That the child is in such physical or mental condition or exhibiting inappropriate behavior as to render attendance or participation in the regular or special education program impracticable. Such conditions shall be shown by a declaration of a licensed physician in situations involving the child's physical condition. In cases involving a mental condition or the exhibition of inappropriate behavior, a recommendation by the established Special Education Multidisciplinary Team will be required.
5. That the child is over age sixteen (16) and does not desire to attend school and is excused by parent or custodian.

5.1103 Prosecution for Violation of Compulsory Attendance Law Officers Charged with Enforcement.

Every school board member, school superintendent, principal, truant officer, and teacher in any school system in this jurisdiction shall be charged with the enforcement of the provisions of this chapter relating to compulsory school attendance. Such enforcement shall extend to all children who are offered school

facilities by the district, regardless of whether or not they actually reside within the district. Such persons shall inquire into all cases of alleged violation of such provisions and shall obtain from any parent, guardian, or other person having custody of any child of school age not attending school in accordance with the requirements of this chapter the reason, if any, for such absence. The school superintendent or principal shall report to the Tribal Court the facts in connection with any violation of the compulsory attendance law. The Tribal Court shall prosecute any person who violates the compulsory school attendance provisions of this chapter. The school board of any school district may employ a truant officer to assist in the enforcement of the compulsory school attendance provisions.

5.1104 Violation of Compulsory School Attendance Provisions - Penalty.

Any parent, guardian, or other person failing to comply with the requirements of this chapter is guilty of an offense and shall be punished by a fine of not more than one hundred dollars for the first offense, and by a fine of not more than two hundred dollars for the second and each subsequent offense.

5.1105 Inoculation Required Before Admission to School

1. No child shall be admitted to any public, private or parochial school, or day care center, child care facility, head start program, or nursery school operating in this jurisdiction unless such child's parent or guardian presents to the institution authorities a certification from a licensed physician or authorized representative of the North Dakota State Department of Health that such child has received immunizations against diphtheria, pertussis, tetanus, measles, rubella (German Measles), mumps and poliomyelitis.
2. A child may enter an institution upon submitting written proof from a licensed physician or authorized representative of the North Dakota State Department of Health stating that he has started receiving the required immunization or has a written consent by the child's parent or guardian for a local health service or department to administer the needed immunization without charge or has complied"

with the requirements for certificate of exemptions as provided for in Subsection 3.

3. Any minor child, through his parent or guardian, may submit to the institution authorities either a certificate from a licensed physician stating that the physical condition of the child is such that immunization would endanger the life or health of the child or a certificate signed by his parent or guardian whose beliefs are opposed to such immunization. The minor child shall then be exempt from the provisions of this section.
4. The enforcement of subsections 1, 2, & 3 shall be the responsibility of the designated institution authority.
5. The immunizations required, and the procedure for their administration, as prescribed by the North Dakota State Department of Health, shall conform to recognized standard medical practices in North Dakota. Indian Public Health Services shall administer the provisions of this section and shall promulgate rules and regulations.
6. When, in the opinion of an Indian Public Health Officer, danger of an epidemic exists from any of the communicable diseases for which immunization is required under this section, the exemptions from immunization against such disease shall not be recognized and children not immunized shall be excluded from an institution listed in subsection I until, in the opinion of the Health Officer, the danger of the epidemic is over. The designated institution authority shall notify those parents or guardians taking legal exception to the immunization requirements that their children are excluded from school during an epidemic as determined by the Indian Public Health Services.

5.1106 Comprehensive Health Education Curriculum.

An ongoing, comprehensive health education curriculum shall be available for grades 1-12 on reservation schools. The curriculum shall include, but not inclusively, basic health, drug dependency and human sexuality.

Chapter 5.12
Juvenile Offenses

5.1201.1 Curfew.

It shall be unlawful for any person fifteen (15) through seventeen (17) years of age to be on the streets, alleys or public grounds of the Turtle Mountain Reservation jurisdiction after the hours of 10:00 p.m. on weekdays and 12:00 midnight on weekends and holidays, except for school sanctioned functions, unless accompanied by a parent or lawful guardian having consent or authorization of custody from the parent.

5.1201.2 It shall be unlawful for any person who has not yet attained fifteen (15) years of age to be on the streets, alleys or public grounds of the Turtle Mountain Reservation jurisdiction after the hour of 9:00 p.m. on any day of the week, except for school sanctioned functions, unless accompanied by a parent or lawful guardian, or having consent or authorization of custody from the parent.

5.1201.3 Any person found in violation of the above Section (1) or (2) shall be penalized as follows:

(a) First Violation:

A written warning from the law enforcement officer shall be issued to the custodial parent or guardian of the juvenile. A copy of the warning will be filed by law enforcement with the Turtle Mountain Tribal Court, Juvenile Division.

(b) Second Violation:

Juvenile will be placed under detention at the Law Enforcement Center until such time as the child can be released to the custodial parent or guardian. A second warning violation shall be issued to the parent at the time of release of the juvenile. A copy of the second warning will be filed by law enforcement with the Turtle Mountain Tribal Court, Juvenile Division.

(c) Third and Subsequent Violations:

The custodial parent or guardian shall be charged with Negligent Supervision of a Minor and upon conviction thereof shall be punished by a fine not to exceed one-hundred dollars (\$100), or

imprisonment not to exceed fifteen (15) days or both such find and imprisonment may be imposed in the discretion of the Court.

5.1202 Prohibition of Tobacco Sales to Minors.

1. Any juvenile under eighteen (18) years of age, who knowingly possesses, purchases, attempts to purchase, smoke, or use cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing will be guilty of an infraction and shall be order to perform not more than forty (40) hours of community service work or may be fined not more than fifty dollars (\$50) or both such fine and community service may be imposed at the discretion of the Court.
2. Minors guilty of Section (1) shall be monitored by their parents and along with their parents be required to attend a tobacco cessation program in the community.
3. It shall be a defense to Subsection (1) if the juvenile's possession or use of tobacco is related to a cultural or religious practice, including without limitation, the use or possession of tobacco during any religious or cultural ceremony; provided a child under the age of eighteen (18) be supervised by a parent, guardian, or elder.
4. Subsection (1) shall not apply to an employee under eighteen (18) years of age employed by a licensed retailer where such person under eighteen years is handling the tobacco as part of his/her employment; provided the employee is not selling to another minor and is supervised by an adult/or manager of the business/establishment.

5.1203 Zero Alcohol Tolerance.

1. It shall be unlawful for any person under the age of twenty-one (21) years to possess or consume any alcohol beverage in the Turtle Mountain jurisdiction. Any person under the age of twenty-one (21) years shall be deemed guilty of a violation of this provision if that person shall have an alcohol concentration above .00 or one percent by weight at the time of performance of a chemical test.

- (a) It shall be a defense to Section 1 above, if the minor's possession or use of alcohol is related to a cultural or religious practice, including, without limitation, the use or possession of alcohol during any religious or cultural ceremony.
- 2. A person who violates Section 1 above is guilty of a misdemeanor, and upon conviction or adjudication of guilt, shall be punished by a fine not to exceed two hundred dollars (\$200) and not less than twenty (20) hours nor more than forty (40) hours of community service work, or a combination of fine and community service work as determined by the court.
 - 3. A person who commits a second or subsequent violation of Section 1 above shall be subject to the penalties prescribed in Section 2 above and shall be court ordered to undergo an assessment of alcohol and other drug problems.
 - (a) The court shall order appropriate supervised treatment or education services in accordance with the clinical alcohol and other drug abuse assessment.
 - (b) Failure to complete the court-ordered treatment shall result in doubling of the fines and community service, and may order incarceration for a period of time not to exceed thirty (30) days, or any combination thereof, as determined by the court.