

TRIBAL CODE

CHAPTER 36:

JUVENILE CODE

CONTENTS:

SUBCHAPTER I: PREAMBLE

36.101 Preamble 36-6
36.102 Purpose..... 36-6
36.103 Abrogation and Greater Restrictions 36-7
36.104 Interpretation..... 36-7
36.105 Severability and Nonliability 36-7

SUBCHAPTER II: JURISDICTION OF THE JUVENILE DIVISION

36.201 Jurisdiction..... 36-7
36.202 Transfer Petition 36-8
36.203 Transfer Hearing 36-8
36.204 Deciding Factors in Transfer Hearing 36-8
36.205 Standard of Proof in Transfer Hearing 36-8
36.206 Pre-Hearing Report in Transfer Proceedings..... 36-9
36.207 Written Transfer Order 36-9
36.208 Non-Criminal Proceedings 36-9
36.209 Rules of Procedure..... 36-9
36.210 Transfers from Other Courts..... 36-9
36.211 Proceedings..... 36-9

SUBCHAPTER III: DEFINITIONS

36.301 General Provisions 36-9
36.302 Adjudicatory Hearing 36-10
36.303 Adult 36-10
36.304 Alcohol Beverage 36-10
36.305 Alcohol or Substance Abuse Emergency Shelter or Halfway House . 36-10
36.306 Child..... 36-10
36.307 Consent Decree 36-10

36.308	Counsel	36-10
36.309	Court or Juvenile Division.....	36-10
36.310	Curriculum Change.....	36-11
36.311	Custodian	36-11
36.312	Detention.....	36-11
36.313	Dispositional Hearing	36-11
36.314	Domicile.....	36-11
36.315	Emergency Foster Home.....	36-11
36.316	Reserved for Future Use	36-11
36.317	Foster Home.....	36-12
36.318	Guardian.....	36-12
36.319	Group Home.....	36-12
36.320	Incorrigible.....	36-12
36.321	Intoxicant	36-12
36.322	Juvenile Probation Officer	36-12
36.323	Juvenile Facility	36-12
36.324	Juvenile Offender.....	36-12
36.325	Juvenile Offense.....	36-12
36.326	Juvenile Shelter Care Facility	36-13
36.327	Juvenile Status Offense.....	36-13
36.328	Member	36-13
36.329	Parent	36-13
36.330	Probation.....	36-13
36.330.1	Prosecutor	36-13
36.331	Protective Supervision	36-13
36.332	Restitution.....	36-14
36.333	Roadway	36-14
36.334	Runaway	36-14
36.335	School	36-14
36.336	School Attendance	36-14
36.337	School Attendance Officer.....	36-14
36.338	Secure Juvenile Detention Facility	36-14
36.339	Shelter Home	36-15
36.340	Transfer to Tribal Court.....	36-15
36.341	Tribal Lands.....	36-15
36.342	Tribe.....	36-15

36.343 Tribal Board.....	36-15
36.344 Tribal Child.....	36-15
36.345 Tribal Court.....	36-16
36.346 Truancy	36-16
36.347 Under the Influence of an Intoxicant	36-16

SUBCHAPTER IV: ORGANIZATION AND FUNCTION OF THE JUVENILE DIVISION

36.401 Juvenile Division Personnel.....	36-16
36.402 Rights of Parties in Juvenile Proceedings.....	36-17
36.403 Taking a Child into Custody	36-18
36.404 Detention Hearing.....	36-21
36.405 Bekaadziwiin (Peaceful Life)	36-22
36.406 Filing a Consent of Petition	36-22
36.407 Issuance of Summons	36-23
36.408 Consent Decree	36-24
36.409 Dismissal of Petition	36-24
36.410 Preliminary Hearing.....	36-25
36.411 Adjudication Proceedings	36-25
36.412 Predisposition Studies: Reports and Examinations	36-26
36.413 Disposition Proceedings	36-27
36.414 Review, Modification, Revocation, Extension or Termination of Dispositional Orders	36-28
36.415 Probation Violation Hearings	36-29

SUBCHAPTER V: STATUS OFFENSES

36.501 Status Offenses.....	36-30
36.502 Initiation of Proceedings.....	36-30
36.503 Hearings and Disposition.....	36-32

SUBCHAPTER VI: COMPULSORY SCHOOL ATTENDANCE

36.601 School Enrollment Required.....	36-33
36.602 Requirement to Attend School.....	36-33
36.603 Truancy Prohibited	36-33
36.604 Enforcement Officers.....	36-34
36.605 Cooperation with School	36-34

36.606 Enforcement Procedure.....	36-34
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SUBCHAPTER VII: CURFEW

36.701 Escanaba Tribal Lands.....	36-34
36.702 Hessel Tribal Lands	36-34
36.703 Kinross Tribal Lands	36-34
36.704 Manistique Tribal Lands.....	36-35
36.705 Marquette Tribal Lands	36-35
36.706 Newberry Tribal Lands.....	36-35
36.707 Sault Ste. Marie Tribal Lands.....	36-35
36.708 St. Ignace Tribal Lands.....	36-35
36.709 Wetmore Tribal Lands	36-35
36.710 All Other Tribal Lands.....	36-35
36.711 Other Children	36-35
36.712 Exceptions to Curfew.....	36-35
36.713 Enforcement Procedure.....	36-36

SUBCHAPTER VIII: PROVISIONS RELATING TO ALCOHOL AND DRUGS

36.801 Under the Influence: Prohibition	36-36
36.802 Use, Procurement or Possession of Intoxicant.....	36-36
36.803 Intoxicants: Restrictions Relating to Tribal Children.....	36-36
36.804 Falsely Representing Age: Prohibition.....	36-37
36.805 Disorderly Conduct.....	36-37
36.806 Contributing to the Delinquency of Children	36-37
36.807 Under Age Possession of Tobacco by a Minor.....	36-37
36.808 Enforcement.....	36-38
36.809 Resisting or Fleeing an Officer	36-38
36.810 Enforcement Procedures	36-38
36.811 Possession or Use of Marijuana by a Minor	36-38

SUBCHAPTER IX: PARENTAL RESPONSIBILITY

36.901 Parental Responsibility for Violations.....	36-39
36.902 Responsibility for Care Costs	36-39
36.903 Liability for Damages	36-39
36.904 Contempt.....	36-39

SUBCHAPTER X: ADDITIONAL MATTERS

36.1001 Juvenile Division Records 36-40
36.1002 Law Enforcement Records..... 36-40
36.1003 Destruction of Records 36-41
36.1004 Juvenile Appeals 36-41
36.1005 Cooperation with Grants 36-41
36.1006 Social Services 36-41
36.1007 Contracts 36-41

HISTORY NOTE

CURRENT ORDINANCE:

Resolution 2000-27, adopted February 23, 2000, adopts Tribal Code Chapter 36: Juvenile Code, effective immediately, and rescinds all earlier Juvenile Codes.

PRIOR ORDINANCES:

Enacted September 20, 1994, Resolution No. 94-117, effective immediately.
Reenacted as part of the Tribal Code July 5, 1995, Resolution No. 95-89.

AMENDMENTS:

Resolution 2020-101, adopted May 5, 2020, amends juvenile age to 18 for adult prosecution.
Resolution 2019-144, adopted May 14, 2019, amends by adding Section 36.811, Possession or Use of Marijuana by a Minor. Effective May 15, 2019.
Resolution 2018-109, adopted May 15, 2018, amends by adding in Definitions §36.330.1 Prosecutor and §36.1001(7) adding Federal Prosecutor.
Resolution 2014-190, adopted October 7, 2014, amends §36.502, Initiation of Proceedings.
Resolution 2008-133, adopted June 17, 2008, amends and renumbers §§36.807. 36.808, 36.809 and 36.810.
Resolution 2007-141, adopted September 25, 2007, amends §36.325 Juvenile Offense.
Resolution 2005-15, adopted February 15, 2005, amends §36.414 (4) to extend time in which Tribal Court can exercise jurisdiction over a child.
Resolution 97-2, adopted January 7, 1997, amends '36.201 Jurisdiction and '36.325 Juvenile Offenses.

TRIBAL CODE

CHAPTER 36:

JUVENILE CODE

SUBCHAPTER I: PREAMBLE

36.101 Preamble.

This Code shall be titled the Juvenile Code.

36.102 Purpose.

The Juvenile Code shall be liberally interpreted and construed to fulfill the following expressed purposes:

(1) To preserve and retain the unity of the family whenever possible and to provide for the care, protection and wholesome mental and physical development of children coming within the provisions of this Chapter.

(2) To recognize that alcohol and substance abuse is a disease this is both preventable and treatable.

(3) To remove from children committing juvenile offenses, the legal consequences of criminal behavior and to substitute therefore a program of supervision, care and rehabilitation consistent with the protection of the Sault Ste. Marie Tribal Community.

(4) To achieve the purposes of this Chapter in a family environment whenever possible, separating the child from the child's parents only when necessary for the child's welfare or in the interests of public safety.

(5) To separate clearly in the judicial and other processes affecting children under this Chapter the juvenile offenses and the juvenile status offenses, and to provide appropriate

and distinct dispositional options for treatment and rehabilitation of these children and families.

(6) To provide judicial and other procedures through which the provisions of this Chapter are executed and enforced and in which the parties are assured a fair hearing and their civil and other legal rights recognized and enforced.

(7) To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community-based alternatives.

(8) To provide a forum where an Indian child charged to be delinquent or a status offender in other jurisdictions may be referred for adjudication and/or disposition.

36.103 Abrogation and Greater Restrictions.

When this Chapter imposes greater restrictions than those contained in other tribal ordinances, codes or resolutions, the provisions of this Chapter shall govern.

36.104 Interpretation.

In its interpretation and application the provisions of this Chapter shall be held to be minimum requirements and shall be liberally construed in favor of the Tribe and shall not be deemed as a limitation upon or repeal of any other tribal power or authority.

36.105 Severability and Nonliability.

(1) If any section, provision or portion of the Chapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.

(2) The Tribe declares that there is no liability on the part of the Tribe, its agencies, agents or employees for any damages which may occur as a result of reliance upon or conformance with this Chapter. The Tribe by the adoption of this Chapter does not waive its sovereign immunity in any respect.

SUBCHAPTER II: JURISDICTION OF THE JUVENILE DIVISION

36.201 Jurisdiction.

(1) There is hereby established for the Sault Ste. Marie Chippewa Indians Tribal Court a division to be known as the Juvenile Division. The Juvenile Division has exclusive original jurisdiction over all proceedings established in this Chapter in which an Indian child is:

(a) alleged to be a juvenile offender as defined in '36.324 of this Chapter,

unless the Juvenile Division transfers jurisdiction to the Tribal Court according to '36.202 of this Chapter; or

(b) alleged to be a child who violates the provisions of subchapter V, VI, VII or VIII of this Chapter.

(2) The Juvenile Division shall have exclusive original jurisdiction over all proceedings under this Chapter in which a child is alleged to be a juvenile offender as defined in '36.324 of this Chapter.

36.202 Transfer Petition.

The prosecutor may file a petition requesting the Juvenile Division to transfer the child to the jurisdiction of the adult Tribal Court if the tribal child is fifteen (15) years of age or older and is alleged to have committed an act which would have been considered a serious crime if committed by an adult.

36.203 Transfer Hearing.

The Juvenile Division shall conduct a hearing to determine whether jurisdiction of the child should be transferred to Tribal Court. The transfer hearing shall be held within ten (10) days of receipt of the petition by the Court. Written notice of the time, place and purpose of the hearing is given to the child and the child's parent, guardian or custodian at least three (3) days before the hearing. At the commencement of the hearing, the Court shall notify the child and the child's parent, guardian or custodian of their rights under '36.402 of this Chapter.

36.204 Deciding Factors in Transfer Hearing.

The following factors shall be considered when determining whether to transfer jurisdiction of the child to Tribal Court:

- (1) The nature and seriousness of the offense with which the child is charged.
- (2) The nature and condition of the child, as evidenced by his age, mental and physical condition.
- (3) The past record of offenses.

36.205 Standard of Proof in Transfer Hearing.

The Juvenile Division may transfer jurisdiction of the child to Tribal Court only if the Court finds clear and convincing evidence that both of the following circumstances exist:

- (1) There are no reasonable prospects for rehabilitating the child through resources available to the Juvenile Division.

(2) The offense(s) allegedly committed by the child evidence a pattern of conduct which constitutes a substantial danger to the public.

36.206 Pre-Hearing Report in Transfer Proceedings.

At least three (3) days prior to the transfer hearing, the petitioner shall prepare a pre-hearing report for the Juvenile Division and make copies of that report available to the child and the child's advocate, parent, guardian or custodian. The pre-hearing report shall address the issues described in '36.204 and '36.205 above.

36.207 Written Transfer Order.

A child may be transferred to Tribal Court only if the Juvenile Division issues a written order after the conclusion of the transfer hearing which contains specific findings and reasons for the transfer in accordance with '36.204 and '36.205 above. This written order terminates the jurisdiction of the Juvenile Division over the child with respect to the juvenile offense(s) alleged in the petition. No child shall be prosecuted in the Tribal Court for a criminal offense unless the case has been transferred to Tribal Court as provided in this Chapter.

36.208 Non-Criminal Proceedings.

No adjudication upon the status of any child in the jurisdiction of the Juvenile Division shall be deemed criminal or be deemed a conviction of a crime unless the Juvenile Division transfers jurisdiction to the Tribal Court according to '36.207 of this Chapter.

36.209 Rules of Procedure.

The procedures in the Juvenile Division shall be governed by the rules of procedure for the Tribal Court which is not in conflict with this Chapter.

36.210 Transfers from Other Courts.

The Juvenile Division may accept or decline transfers from other states or tribal courts involving alleged delinquent children or alleged status offenders for the purposes of adjudication and/or disposition. Proceedings transferred pursuant to the provisions of any state or federal law shall be deemed to have been commenced within the jurisdiction of the Juvenile Division. Proceedings transferred to the Juvenile Division shall be identical with proceedings originally filed in the Juvenile Division.

36.211 Proceedings.

All proceedings pursuant to this Chapter shall be open to the public except proceedings pursuant to Chapter V.

SUBCHAPTER III: DEFINITIONS

36.301 General Provisions.

For the purpose of this Chapter, certain items are defined in this section. When not inconsistent with the context, words in the present tense include the future, words in the singular number include the plural number, words in the plural include words in the singular, and words in the masculine gender include the feminine gender. The word "shall" is always mandatory and not merely directory.

36.302 Adjudicatory Hearing.

"Adjudicatory hearing" means a proceeding in the Juvenile Division to determine whether a child has committed a specific juvenile offense or juvenile status offense as set forth in a petition.

36.303 Adult.

"Adult" means an individual who is eighteen (18) years of age or older (see the definition of transfer to Tribal Court).

36.304 Alcohol Beverage.

"Alcohol beverage" means a fermented malt beverage or intoxicating liquor as defined in the Tribal Liquor Control Ordinance, Tribal Code Chapter 41.

36.305 Alcohol or Substance Abuse Emergency Shelter or Halfway House.

"Alcohol or substance abuse emergency shelter or halfway house" means an appropriately licensed and supervised emergency shelter or halfway house for the care and treatment of juveniles with regard to alcohol and/or substance abuse problems.

36.306 Child.

"Child" means an individual who is less than eighteen (18) years old (see the definition of transfer to Tribal Court).

36.307 Consent Decree.

"Consent decree" means a Court order which suspends a juvenile offender proceeding prior to adjudication and continues the child or the family under supervision under terms and conditions negotiated with the prosecutor and agreed to by all parties.

36.308 Counsel.

"Counsel" means an advocate or attorney.

36.309 Court or Juvenile Division.

"Court or Juvenile Division" means the Juvenile Division of the Sault Ste. Marie Chippewa Tribal Court.

36.310 Curriculum Change.

"Curriculum change" includes but is not necessarily limited to:

- (1) a change in a child's instructor, if available;
- (2) a change in the scheduling of a child's classes, if available;
- (3) reassignment of a child into another class section, if available;
- (4) a change in the content of a child's course of instruction, if available; and
- (5) a change in the child's school, if available.

36.311 Custodian.

"Custodian" means a person, other than a parent or guardian, to whom legal custody of the child has been given.

36.312 Detention.

"Detention" means exercising authority over a child by physically placing them in any juvenile facility designated by the Court and restricting the child's movement in that facility.

36.313 Dispositional Hearing.

"Dispositional hearing" means a proceeding in the Juvenile Division to determine how to resolve a case after it has been determined at the adjudicatory hearing that the child has committed a specific juvenile offense(s) or juvenile status offense.

36.314 Domicile.

"Domicile" means a person's permanent home, legal home or main residence. The domicile of a child is generally that of the custodial parent or guardian. Domicile includes the intent to establish a permanent home. Domicile for purposes of jurisdiction is established at the time of the alleged acts.

36.315 Emergency Foster Home.

"Emergency foster home" means placement with a family whose home has been licensed to accept emergency placements of children at any hour of the day or night.

36.316 Reserved for Future Use.

36.317 Foster Home.

"Foster home" means placement with a family whose home has been licensed to accept placement of children under the age of eighteen (18).

36.318 Guardian.

"Guardian" means a person assigned by a court of law, other than a parent, having the duty and authority to provide care, shelter and control of a child.

36.319 Group Home.

"Group home" means a residential detention facility which is licensed to care for children under the age of eighteen (18).

36.320 Incorrigible.

"Incorrigible" means a child who is repeatedly disobedient to the reasonable and lawful commands of his or her parents, guardian or custodian.

36.321 Intoxicant.

"Intoxicant" means a drug or alcohol beverage.

36.322 Juvenile Probation Officer.

"Juvenile Probation Officer" means the Juvenile Probation Officer or any other appropriately titled person who performs the duties and responsibilities set forth in '36.401(2) of this Code.

36.323 Juvenile Facility.

"Juvenile facility" means any juvenile facility (other than a school) that cares for juveniles or restricts their movement, including secure juvenile detention facilities, alcohol or substance abuse emergency shelter or halfway houses, foster homes, emergency homes, group homes and shelter homes.

36.324 Juvenile Offender.

"Juvenile offender" means a child who commits a juvenile offense or juvenile status offense prior to the child's eighteenth (18th) birthday.

36.325 Juvenile Offense.

"Juvenile offense" means any criminal violation of the Tribal Code, including a

violation of Chapters 21 or 71, which is committed by a person who is under the age of eighteen (18) at the time the offense was committed.

36.326 Juvenile Shelter Care Facility.

"Juvenile shelter care facility" means any juvenile facility other than a secure juvenile detention facility.

36.327 Juvenile Status Offense.

"Juvenile status offense" means a violation of the provisions of subchapters V, VI, VII and VIII committed by a person who is under the age of eighteen (18) at the time the offense was committed.

36.328 Member.

"Member" means a person enrolled in the Tribe.

36.329 Parent.

"Parent" includes a natural or adoptive parent, but does not include persons whose parental rights have been legally terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.

36.330 Probation.

"Probation" means a legal status created by court order whereby a juvenile offender is permitted to remain in his home under prescribed conditions and under the supervision of a person designated by the court. A juvenile offender on probation is subject to return to court for further proceedings in the event of his failure to comply with any of the prescribed conditions of probation.

36.330.1 Prosecutor

"Prosecutor", means the prosecuting attorney for the Sault Ste. Marie Tribe of Chippewa Indians or any person designated by the Prosecutor pursuant to §87.110(1).

36.331 Protective Supervision.

"Protective supervision" means a legal status created by court order under which a juvenile offender is permitted to remain in his home or is placed with a relative or other suitable individual and supervision and assistance is provided by the Court, a health or social services agency or some other agency designated by the Court.

36.332 Restitution.

"Restitution" means financial or other reimbursement by the child and/or the child's

parents or legal guardian to the victim, and is limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical, psychiatric and psychological treatment for injury to person, and lost wages resulting from injury, which are a direct and proximate result of the delinquent act. Restitution does not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses.

36.333 Roadway.

"Roadway" means that portion of a road between the regularly established curb lines or that portion which is improved, designed or ordinarily used for vehicular traffic, including the shoulder.

36.334 Runaway.

"Runaway" means a child who has deserted his or her home without sufficient cause.

36.335 School.

"School" means the Bahweting Anishnabe Public School Academy, Inc. or any other school which enrolls children living on tribal lands.

36.336 School Attendance.

"School attendance" means physical presence of a child in school attending scheduled class or during such hours and on such days as determined by the school or, during hours scheduled by the school for the student, unless excused from such attendance by school policy, state law or tribal law.

36.337 School Attendance Officer.

"School attendance officer" means an employee designated by a school board or the Tribe to deal with matters relating to school attendance and truancy.

36.338 Secure Juvenile Detention Facility.

"Secure juvenile detention facility" means a facility which:

(1) Contains locked cells or rooms which are separated by sight and sound from any adult inmates.

(2) Restricts the movement of those placed in the locked cells or rooms.

(3) Complies with the other requirements of the Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. 5601 et. seq.

36.339 Shelter Home.

"Shelter home" means a residential facility which is licensed to care for children under the age of eighteen (18) in an unrestricted setting.

36.340 Transfer to Tribal Court.

"Transfer to Tribal Court" means transferring a child from the jurisdiction of the Juvenile Division to the jurisdiction of the Tribal Court according to '36.203 of this Chapter which results in the termination of the Juvenile Division's jurisdiction over that offense.

36.341 Tribal Lands.

"Tribal lands" shall mean:

(1) all land within the limits of the Tribe's reservation, including trust land, fee patented land and rights of way running through the reservation, and

(2) all land outside the boundaries of the Tribe's reservation held in trust by the United States for individual members of the Tribe or for the Tribe, and

(3) all other land considered "Indian Country" as defined by 18 U.S.C. '1151 that is associated with the Tribe.

36.342 Tribe.

"Tribe" means the Sault Ste. Marie Tribe of Chippewa Indians.

36.343 Tribal Board.

"Tribal Board" means the Board of Directors of the Sault Ste. Marie Tribe of Chippewa Indians.

36.344 Tribal Child.

"Tribal child" means a child who is either:

(1) a member; or

(2) the biological child of a member; or

(3) lives on the tribal lands.

36.345 Tribal Court.

"Tribal Court" means the adult division of the Sault Ste. Marie Chippewa Tribal Court.

36.346 Truancy.

"Truancy" means any absence of part or all of one or more days from school during which the school attendance officer, principal or teacher has not been notified of the legal cause of such absence by the person having the absent pupil under his or her control, and also means intermittent attendance carried on for the purpose of defeating the intent of the compulsory school attendance ordinance. This shall also include absences as a result of suspension or expulsion by school personnel based on continued disruptive behavior on school grounds.

36.347 Under the Influence of an Intoxicant.

"Under the influence of an intoxicant" means the actor's physical or mental functioning is substantially impaired as a result of the use of an intoxicant.

SUBCHAPTER IV: ORGANIZATION AND FUNCTION OF THE JUVENILE DIVISION

36.401 Juvenile Division Personnel.

(1) Juvenile Division Judge.

In carrying out the duties and powers specifically enumerated under this Juvenile Code, judges of the Juvenile Division shall have the authority and duties as set forth in this Chapter, in Tribal Code Chapters 30 and 80, or inherent in the position of tribal judge.

(2) Juvenile Probation Officer.

(a) Appointment - The Court shall appoint juvenile probation officer(s) to carry out the duties and responsibilities set forth in this Chapter. The person(s) carrying out the duties and responsibilities set forth in this section may be labeled juvenile probation officers or any other title which the Court finds appropriate so long as they perform the duties and responsibilities set forth in this section.

(b) Qualifications - The juvenile probation officer must have an educational background and/or prior experience in the field of delivering social services to youth.

(c) Resource Development - The juvenile probation officer shall identify and develop resources on the tribal lands, in conjunction with the Juvenile Division and the Tribal Board, to enhance each tribal child's potential as a viable member of the tribal community.

(d) Duties:

(i) Make investigations as provided in this Chapter or as directed by the Court.

(ii) Make reports to the Court as provided in this Chapter or as directed by the Juvenile Division.

(iii) Conduct informal adjustments.

(iv) Provide counseling services.

(v) Perform other duties such as care, custody and transportation of children as the Court may require.

(e) Prohibited Duties - The Juvenile Probation Officer shall not be employed as or be required to perform the duties of a prosecutor or law enforcement official.

(3) Additional Court Personnel - The Court may set qualifications and appoint additional Juvenile Division personnel such as guardians ad litem, court appointed special advocates (CASAs), juvenile advocates, and/or referees whenever the Court decides that it is appropriate to do so.

36.402 Rights of Parties in Juvenile Proceedings.

(1) A child alleged to be a juvenile offender shall from the time of being taken into custody be accorded and advised of the privilege against self-incrimination and should not be questioned without the presence or permission of the parent, guardian or custodian except to determine identity, to determine the name(s) of the child's parents or legal custodian or to conduct medical assessment or treatment for alcohol or substance abuse when the child's health and well being are in serious jeopardy.

(2) In a proceeding on a petition alleging that a child is a juvenile offender:

(a) An out-of-court statement that would be inadmissible in a criminal matter in Tribal Court shall not be received in evidence.

(b) Evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition.

(3) In juvenile offender cases, the child and his parent, guardian or custodian shall be advised by the Court and/or its representative that the child may be represented by counsel at all stages of the proceedings. If counsel is not retained for the child, or if it does not appear that counsel will be retained, the Court in its discretion may appoint counsel for the child.

(4) At his first appearance before the Juvenile Division, the child alleged to be a juvenile offender and the child's parent, guardian or custodian shall be informed by the Court

of the following:

- (a) The allegations against him.
- (b) The right to an advocate or attorney at his own expense.
- (c) The right to testify or remain silent and that any statement made by him may be used against him.
- (d) The right to cross-examine witness.
- (e) The right to subpoena witnesses on his own behalf and to introduce evidence on his own behalf.
- (f) The possible consequences if the allegations in the petition are found to be true.

36.403 Taking a Child Into Custody.

- (1) A law enforcement officer may take a child into custody when:
 - (a) The child commits a juvenile offense in the presence of the officer.
 - (b) The officer has a reasonable suspicion to believe a juvenile offense has been committed by the child being detained.
 - (c) An appropriate custody order or warrant has been issued by the Court authorizing the taking of a particular child.
- (2) At the time the child is taken into custody as an alleged juvenile offender, the arresting officer shall give the following warning:
 - (a) The child has the right to remain silent.
 - (b) Anything the child says can be used against the child in court.
 - (c) The child has a right to the presence of his parent, guardian or custodian and/or counsel during questioning.
 - (d) The child has a right to an advocate or attorney at his own expense.
- (3) A law enforcement officer taking a child into custody shall give the warning listed above to any child he takes into custody prior to questioning and then shall do one of the following:
 - (a) Release the child to the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate.

(b) Release the child to a relative or other responsible adult member if the child's parent, guardian or custodian consents to the release. (If the child is twelve (12) years of age or older, the child and his parent, guardian or custodian must both consent to release).

(c) Deliver the child to the juvenile probation officer, or to a juvenile facility as designated by the Court, or to a medical facility if the child is believed to need prompt medical treatment, or is under the influence of alcohol or other chemical substances.

(4) The Juvenile Probation Officer shall, immediately upon delivery of the child for custody, review the need for continued custody and shall release the child to his parent, guardian or custodian in order to appear at the hearing on a date to be set by the Court, unless:

(a) The act is serious enough to warrant continued detention.

(b) There is probable cause to believe the child has committed the offense(s) alleged.

(c) There is reasonable cause to believe the child will run away so that he will be unavailable for further proceedings.

(d) There is reasonable cause to believe that the child will commit a serious act causing damage to person or property.

(5) If a child is taken into custody and not released to his parent, guardian or custodian, the person taking the child into custody shall immediately attempt to notify the child's parent, guardian or custodian. All reasonable efforts shall be made to advise the parent, guardian or custodian of the reason for taking the child into custody and the place of continued custody. Such reasonable efforts shall include telephone and personal contacts at the home or place of employment or other locations where the person is known to frequent. If notification cannot be provided to the child's parent, guardian or custodian, the notice shall be given to a member of the extended family of the parent, guardian or custodian and to the child's extended family.

(6) If the Juvenile Probation Officer determines that there is a need for continued custody of the child in accordance with subsection (4) of this Chapter, then the following criteria shall be used to determine the appropriate juvenile facility for the child:

(a) a child may be detained in a secure juvenile detention facility as designated by the Court only if one or more of the following conditions are met:

(i) The child is a fugitive from another jurisdiction wanted for a felony offense.

(ii) The child is charged with murder, sexual assault or a crime of

violence, a crime involving a deadly weapon or which has resulted in a serious bodily injury.

(iii) The child is uncontrollable and has committed a serious physical assault on the arresting officer or on other security personnel while resisting arrest or detention.

(iv) The child is charged with committing one of the following acts which would be an offense if the child were an adult: vehicular homicide, abduction, rape, arson, assault, domestic assault, battery, burglary or robbery.

(v) The child is already detained or on conditional release for another juvenile offense.

(vi) The child has demonstrable recent record of willful failures to appear at Juvenile Division proceedings.

(vii) The child has made a serious escape attempt.

(viii) The child requests in writing that he be given protection by being confined in a secure confinement area and there is a present and immediate threat of serious physical injury to the child.

(b) A child may be housed in a juvenile shelter care facility as designated by the Court only if one of the following conditions exists:

(i) One of the conditions described in subsection (a) above exists.

(ii) The child is unwilling to return home or to the home of an extended family member.

(iii) The child's parent, guardian, custodian or extended family member is unavailable, unwilling or unable to permit the child to return to his home.

(iv) There is an evident and immediate physical danger to the child in returning home, and all extended family members are unavailable, unwilling or unable to accept responsibility for temporary care and custody of the child.

(c) A child may be referred to an alcohol or substance abuse emergency shelter or halfway house if it is determined that there is a need for continued custody of the child in accordance with '36.403 of this Chapter and:

(i) The child has been arrested or detained for a juvenile offense relating to alcohol or substance abuse.

(ii) There is space available in an alcohol or substance abuse emergency shelter or halfway house designated by the Court.

(iii) The child is not deemed to be a danger to himself or others.

36.404 Detention Hearing.

(1) Where a child who has been taken into custody is not released, a detention hearing shall be convened by the Court within seventy-two (72) hours, inclusive of holidays and weekends, of the child's initial detention.

(2) The purpose of the detention hearing is to determine:

(a) Whether probable cause exists to believe the child committed the alleged juvenile offense.

(b) Whether continued detention is necessary pending further proceedings.

(3) Notice of the detention hearing shall be given to the child and the child's parent, guardian or custodian and the child's counsel as soon as the time for the detention hearing has been set. The notice shall contain:

(a) The name of the court.

(b) The title of the proceeding.

(c) A brief statement of the juvenile offense the child is alleged to have committed.

(d) The date, time and place of the detention hearing.

(4) Detention hearings shall be conducted by the Juvenile Division separate from other proceedings. At the commencement of the detention hearing, the Court shall notify the child and the child's parent, guardian or custodian of their rights under '36.402 of this Chapter.

(5) The Court shall consider the evidence at the detention hearing as it pertains to the detention of the child. If the Court determines that there is a need for continued detention, the Court shall specify where the child is to be placed until the adjudicatory hearing.

(6) The Court shall issue a written finding stating the reasons for release or continued detention of the child. If the Court determines that there is a need for continued detention, the Court shall specify where the child is to be placed until the adjudicatory hearing.

(7) If the child is not released at the detention hearing, and a parent, guardian, custodian or relative was not notified of the hearing and did not appear or waive appearance at the hearing, the Court shall rehear the detention matter without unnecessary delay upon the filing of a motion for rehearing and a declaration stating the relevant facts.

36.405 Bekaadziwiin (Peaceful Life).

(1) The Sault Ste. Marie Chippewa Tribal Court shall promulgate the guidelines governing Peacemaking.

(2) The Tribal Prosecutor shall present cases that meet the Bekaadziwin guidelines to the Tribal Peacemaking Committee. The Tribal Peacemaking Committee shall review all cases presented and shall:

- (a) decide not to proceed with any action.
- (b) refer the matter to Bekaadziwin for peacemaking.
- (c) develop a case plan for the juvenile.
- (d) refer the matter to the Juvenile Division.

(3) The Tribal Peacemaking Committee may request the Tribal Prosecutor to file a formal petition upon a finding that the case plan has not been substantially followed.

(4) The Peacemakers shall have the authority to hear the following cases consistent with the established Bekaadziwin guidelines:

- (a) any juvenile offenses.
- (b) any juvenile status offenses.
- (c) any other cases that are referred by the Tribal Court.
- (d) cases from individual Tribal members requesting to voluntarily access Peacemaking.

36.406 Filing and Content of Petition.

Formal juvenile offender proceedings shall be instituted by a petition filed by the prosecutor on behalf of the Tribe and in the interests of the child. The petition shall set forth with specificity:

- (1) The name, birth date, residence and tribal affiliation of the child.
- (2) The names and residences of the child's parents, guardian or custodian.
- (3) A citation to the specific section(s) of this Chapter which give the Court

jurisdiction over the proceedings.

(4) A citation to the criminal statute or other law or ordinance which the child is alleged to have violated.

(5) A plain and concise statement of facts upon which the allegations are based, including the date, time and location at which the alleged acts occurred.

(6) Whether the child is in custody and, if so, the place of detention and time he was taken into custody.

36.407 Issuance of Summons.

(1) After a juvenile offender petition has been filed, the Court shall direct the issuance of summons to:

- (a) The child.
- (b) The child's parents, guardian or custodian.
- (c) The child's counsel.
- (d) Appropriate medical and/or alcohol rehabilitation experts.
- (e) Any other person the Court deems necessary for the proceedings.

(2) The summons shall contain the name of the Court, the title of the proceedings, and the date, time and place of the hearing. The summons shall also advise the parties of their applicable rights under '36.402 of this Chapter. A copy of the petition shall be attached to the summons.

(3) The summons shall be served upon the parties at least seven (7) days prior to the hearing. The summons shall be delivered personally by a law enforcement officer or appointee of the Court. If the summons cannot be delivered personally, the Court may deliver it by registered mail. If the summons cannot be delivered by registered mail, it may be by publication. A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

36.408 Consent Decree.

(1) At any time after the filing of a juvenile offender petition, the Court may, on motion of the prosecutor or that of counsel for the child, suspend the proceedings and continue the child under supervision in his own home under terms and conditions negotiated with the juvenile probation officer and agreed to by all the parties affected. The Court's order continuing the child under supervision pursuant to this section shall be known as a consent decree.

(2) A consent decree shall remain in force for six (6) months unless the child is discharged sooner by the juvenile probation officer. Prior to the expiration of the six (6) months period, and upon the application of the juvenile probation officer or any other agency supervising the child under a consent decree, the Court may extend the decree for an additional six (6) months in the absence of objection to extension by the child. If the child objects to the extension, the Court shall hold a hearing and make a determination on the issue of extension.

(4) If, either prior to a discharge by the juvenile probation officer or expiration of the consent decree, the child fails to fulfill the terms of the decree, the prosecutor may file a petition to revoke the consent decree. Proceedings on the petition shall be conducted according to '36.410 of this Chapter. If the child is found to have violated the terms of the consent decree, the Court may:

(a) Extend the period of the consent decree.

(b) Make any other disposition which would have been appropriate in the original proceeding.

(5) If, either prior to discharge or expiration of the consent decree, a new juvenile offender complaint is filed against the child, the prosecutor may:

(a) File a petition to revoke the consent decree in accordance with subsection (4) of this Chapter.

(b) File a petition on the basis of the new complaint which has been filed against the child.

36.409 Dismissal of Petition.

A child who is discharged by or who completes a period under supervision without reinstatement of the original juvenile offense petition shall not again be proceeded against in any court for the same offense alleged in the petition or an offense based upon the same conduct, and the original petition shall be dismissed with prejudice. Nothing in this section precludes a civil suit against the child for damages arising from this conduct.

36.410 Preliminary Hearing.

(1) The Court shall conduct a preliminary hearing within fourteen (14) days of the date of filing the petition or in cases of alternative sentencing within fourteen (14) days of the filing of the petition to revoke a consent decree.

(2) The Court shall read the allegations of the petition in open Court unless waived and shall advise the child and parents of the rights in '36.402. After advising the child and parents of the rights, the Court shall allow the child an opportunity to deny or admit the allegations and make a statement of explanation.

(3) If the child admits the allegations, the Court may proceed directly to disposition pursuant to '36.413.

36.411 Adjudication Proceedings.

(1) Hearings on juvenile offender petitions shall be conducted by the Juvenile Division separate from other proceedings. The Court shall conduct the adjudicatory hearing for the sole purpose of determining whether the child has committed a juvenile offense. At the adjudicatory hearing, the child and the child's parent, guardian or custodian shall have the applicable rights listed in '36.402 of this Chapter.

(2) If the child remains in custody, the adjudicatory hearing shall be held within fourteen (14) days after the preliminary hearing. If the child is released from custody or was not taken into custody, then the adjudicatory hearing shall be held within thirty (30) days after the preliminary hearing by the Juvenile Division.

(3) Notice of the adjudicatory hearing shall be given to the child and the child's parent, guardian or custodian, the child's counsel and any other person the Court deems necessary for the hearing at least seven (7) days prior to the hearing pursuant to '36.407.

(4) If the allegations in the juvenile offender petition are denied, the Juvenile Division shall set a date to hear evidence on the petition.

(5) If the child admits the allegations of the petition, the Juvenile Division shall consider disposition only after a finding that:

(a) The child fully understands his rights pursuant to '36.402, and fully understands the consequences of his admission.

(b) The child voluntarily, intelligently and knowingly admits all facts necessary to constitute a basis for Juvenile Division action.

(c) The child has not, in his statements on the allegations, set forth facts, which if found to be true, would be a defense to the allegations.

(6) If the Court finds that the child has validly admitted the allegations contained in the petition, the Court shall make and record its findings and schedule a disposition hearing in accordance with '36.412 of this Chapter. Additionally, the Court shall specify in writing whether the child is to be continued in an out of the home placement pending the disposition hearing.

(7) If the Court finds on the basis of proof beyond a reasonable doubt that the allegations contained in the petition are true, the Court shall make and record its findings and schedule a disposition hearing in accordance with '36.402 of this Chapter. Additionally, the Court shall specify in writing whether the child is to be continued in an out of home placement pending the disposition hearing.

(8) If the Court finds that the allegations on the juvenile offender petition have not been established beyond a reasonable doubt, it shall dismiss the petition and order the child released from any detention imposed in connection with the proceeding.

36.412 Predisposition Studies: Reports and Examinations.

(1) The Court may direct the juvenile probation officer to prepare a written disposition study and report for the Court concerning the child, the child's family, environment and any other matter relevant to need for treatment or other appropriate disposition of the case when:

- (a) The child has been adjudicated as a juvenile offender.
- (b) A notice of intent to admit the allegations of the petition has been filed.
- (c) Upon request of the Juvenile Division.

(2) The report shall contain a specific plan for the child, aimed at resolving the problems presented in the petition. The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child under the proposed plan. Preferences shall be given to the dispositional alternatives which are least restrictive of the child's freedom and are consistent with the interests of the community.

(3) The Juvenile Division may order a medical assessment of a child arrested or detained for a juvenile offense relating to or involving alcohol or substance abuse to determine the mental or physical state of the child so that appropriate steps can be taken to protect the child's health and well-being.

(4) Where there are indications that the child may be emotionally disturbed or developmentally disabled, the Court, on a motion by the prosecutor or that of counsel for the child, may order the child to be tested by a qualified psychiatrist, psychologist or licensed psychometrician prior to a hearing on the merits of the petition. An examination made prior to the hearing, or as part of the predisposition study and report, shall be conducted on an outpatient basis unless the Court finds that placement in a hospital or other appropriate facility is necessary.

(5) The Court may order an examination of a child adjudicated as a juvenile offender by a physician, psychiatrist or psychologist. The Court may also, following the adjudicatory hearing, order the examination by a physician, psychiatrist or psychologist of a parent or custodian who gives his consent and whose ability to care for or supervise a child is an issue before the Court at the dispositional hearing.

(6) The Court may order that a child adjudicated as a juvenile offender be transferred to an appropriate facility for a period of not more than sixty (6) days for purposes of diagnosis with direction that the Court be given a written report at the end of that period indicating the disposition which appears most suitable.

(7) Evaluations, assessments, dispositional reports and other material to be considered by the Court in a juvenile hearing shall be submitted to the Court and to the parties no later than three (3) days before the scheduled hearing date. A declaration including reasons why a report has not been completed shall be filed with the Court no later than three (3) days before the scheduled hearing date if the report will not be submitted before the deadline. The Court may in its discretion dismiss a petition if the necessary reports, evaluations or other materials have not been submitted in a timely manner.

36.413 Disposition Proceedings.

(1) The Court shall conduct the disposition hearing to determine how to resolve a case after it has been determined at the adjudicatory hearing that the child has committed a specific juvenile offense. The Court shall make and record its dispositional order. At the disposition hearing, the child and the child's parent, guardian or custodian shall have the applicable rights listed in '36.402 of this Chapter.

(2) If the child remains in custody, the dispositional hearing shall be held within thirty (30) days after the adjudicatory hearing. If the child is released from custody or was not taken into custody, then the disposition hearing shall be held within sixty (60) days after the adjudicatory hearing.

(3) Notice of the disposition hearing shall be given to the child and the child's parent, guardian or custodian, the child's counsel and any other person the Court deems necessary for the hearing at least seven (7) days prior to the hearing in accordance with '36.407 of this Chapter.

(4) In the disposition hearing, the Court may consider all relevant and material evidence determining the questions presented, including oral and written reports, and may rely on such evidence to the extent of its probative value even though not otherwise competent. The Court shall consider any predisposition report, physician's report or social study it may have ordered and afford the child, the child's parent, guardian or custodian and the child's counsel an opportunity to controvert the factual contents and conclusions of the report(s). The Court shall also consider the alternative predisposition report or recommendations prepared by the child or the child's counsel, if any.

(5) If a child is found by the Court to be a juvenile offender, the Court may make and record any of the following orders of disposition for the child's supervision, care and rehabilitation:

(a) Permit the child to remain with his parent, guardian or custodian, subject to such conditions and limitations as the Court may prescribe.

(b) Place the child in the legal custody of a relative or other suitable person, subject to such conditions and limitations as the Court may prescribe.

(c) Order the child to pay restitution (as defined in '36.329 of this Chapter).

(d) Place the child under protective supervision (as defined in '36.328 of this Chapter) under such conditions and limitations as the Court may prescribe.

(e) Place the child on probation (as defined in '36.327 of this Chapter) under such conditions and limitations as the Court may prescribe.

(f) Place the child in a juvenile facility designated by the Court, including alcohol or substance abuse, emergency shelter or halfway house, emergency foster home, foster home, group home, shelter home or secure juvenile detention facility.

36.414 Review, Modification, Revocation, Extension or Termination of Dispositional Orders.

(1) Dispositional orders are to be reviewed at the Court's discretion at least once every six (6) months.

(2) The Court may hold a hearing to modify, revoke or extend a disposition order at any time upon the motion of:

(a) The child.

(b) The child's parents, guardian or custodian.

(c) The child's counsel.

(d) The juvenile probation officer.

(e) The prosecutor.

(f) The institution, agency or person vested with legal custody of the child or responsibility for protective supervision.

(g) The Court on its own motion.

(3) A hearing to modify, revoke or extend the disposition order shall be conducted according to '36.412.

(4) Jurisdiction for a child who has reached their eighteenth (18th) birthday may be extended for up to two years upon motion of the prosecuting attorney or attorney for the child and upon good cause shown, regardless of when the child first came under the Court's jurisdiction. The Court may continue to exercise ancillary jurisdiction over the parent of a child to ensure payment of placement costs or other costs associated with the juvenile proceeding, regardless of whether the child continues under the Court's jurisdiction. The record concerning the child shall be destroyed according to §36.1003 of this Chapter.

36.415 Probation Violation Hearings.

(1) If a juvenile offender is placed on probation, the Court or the juvenile probation officer may prescribe limitations on the juvenile. This may include but is not limited to house arrest and curfews as well as community service activities.

(2) If the juvenile fails to comply with the probation requirements or commits subsequent juvenile offenses or juvenile status offenses, the Court may conduct a probation violation hearing separate from a disposition review hearing pursuant to '36.413.

(3) The Court Clerk shall issue a notice of hearing to the juvenile. The notice shall include a copy of the probation violation petition, and a notice that the probation violation hearing will occur and that the juvenile will need to have any and all witnesses at the Court on that day. The juvenile may contact the Court Clerk for issuance of any subpoenas necessary.

(4) The juvenile probation officer shall file a petition alleging that the juvenile has violated the conditions of the probation. The petition shall include all relevant facts regarding the violation including any dates.

(5) At the probation violation hearing, the Court may take any relevant testimony from the juvenile probation officer and the juvenile or the juvenile's parents, guardian or custodian or anyone else the Court deems appropriate.

(6) If the allegations in the probation violation petition are sustained by a preponderance of the evidence, the Court may order additional probation requirements or any other disposition that the Court is permitted to order pursuant to '36.412.

SUBCHAPTER V: STATUS OFFENSES

36.501 Status Offenses.

It is a violation of this Chapter for a child to runaway, be incorrigible or commit a violation of subchapters VI, VII or VIII.

36.502 Initiation of Proceedings.

(1) Requests stating that a juvenile has committed a status offense pursuant to this subchapter may be submitted by the child, the child's parent, guardian or custodian, an appropriate social services agency and/or the juvenile probation officer. A request stating that a child is habitually and without justification absent from school may also be submitted by an authorized representative of a local school board or governing authority of a private school.

(2) A petition pursuant to this subchapter shall not be filed unless the prosecutor has

determined and endorsed upon the petition that the filing of the petition is in the best interest of the child and his family.

(3) A petition filed pursuant to this subchapter shall include:

(a) The name, birth, date and residence address of the child.

(b) The name and residence address of the parents, guardian or custodian of the child.

(c) That the child and his or her parent, guardian or custodian has exhausted or refused appropriate and available services as evidenced by a report which shall be prepared and submitted by the juvenile probation officer at the same time the petition is filed, or, in the case of petition based upon a child's alleged habitual and unjustifiable absence from school, that a declaration as required under subsection (4) of this Chapter.

(d) That Court intervention is necessary to secure services which are accessible to the Court.

(e) The additional required allegations set forth in either subsection (4) or (5) of this Chapter.

(4) By signing a petition alleging that a child is habitually and without justification absent from school, the prosecutor is certifying that school has assessed if the following steps are necessary, and if necessary, that they were completed.

(a) That the school and a child's parent, guardian or custodian have held a meeting or the child's parent, guardian or custodian has refused to attend a meeting to discuss the child's habitual and unjustified absence from school.

(b) That the school has provided an opportunity for counseling to determine whether a curriculum change would resolve the child's problem and if the local school board or governing authority of a private school provides an alternative education program, that the child has been provided with an opportunity to enroll in the alternative education program.

(c) That the school has conducted a review of the child's educational status which may include medical, psychological and/or educational testing of the child in accordance with the school regulations to determine whether learning problems may be a cause of the child's absence from school and, if so, what steps have been taken to overcome the learning problems.

(d) That the social worker or other appropriate official of the child's school has conducted an investigation to determine whether social problems may be a cause of the child's absence from school, and, if so, that appropriate action has been taken.

(e) That the school has sought assistance from appropriate agencies and

resources available to the local school board or private school, or has referred the matter to a local social services agency for the purpose of utilizing and coordinating such agencies and resources.

It shall be a defense to the petition filed that one, or more, of the steps above were necessary and were not completed. A child, parent, or their attorney, can object to a petition, at any point prior to disposition, if the above steps were necessary but were not completed. If the court finds that one or more of the steps above would have been eliminated the need for the Court to take jurisdiction of the child and they were not completed, the Court may order that the necessary evaluation or service be completed, or the Court may dismiss the case.

(5) In addition to the allegations required under subsection (3) of this Chapter, a petition alleging that the child is incorrigible shall also allege that the filing of the petition was preceded by complying with each of the following that are applicable and appropriate:

(a) The child and his family have participated in counseling or either the child or his family has refused to participate in family counseling.

(b) The child has been placed in the home of a relative, if available, or the child has refused placement in the home of a relative.

(6) After a petition alleging that the child has committed a status offense has been filed, a summons shall be issued directed to the child, the child's parent, guardian or custodian, their counsel and to such other persons as the Court considers proper or necessary parties. The content and service of the summons shall be in accordance with '36.407 of this Chapter.

36.503 Hearings and Disposition.

(1) Juvenile status offense hearings shall be conducted by the Juvenile Division separate from other proceedings. At all hearings, the child and the child's family, guardian or custodian shall have the applicable rights listed in '36.402 of this Chapter. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses and other persons requested by the parties shall be admitted.

(2) Notice of all hearings shall be given to the child, the child's parent, guardian or custodian, their counsel and any other person the Court deems necessary for the hearing at least seven (7) days prior to the hearing in accordance with sections of this Chapter.

(3) The Court, after hearing all of the evidence bearing on the allegations contained in the petition, shall make and record its findings as to whether the child has committed a status offense. If the Court finds on the basis of clear and convincing evidence that the juvenile has committed a status offense, the Court may proceed immediately or at a postponed hearing to make disposition of the case.

(4) The Court may order any appropriate predisposition study, report or examination under '36.411 of this Chapter.

(5) In that part of the hearing on dispositional issues all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the Court and may be relied upon to the extent of its probative value even though not competent had it been offered during the part of the adjudicatory hearings. The Court shall consider any predisposition report, physician's report or social study it may have ordered and afford the child, the child's parent, guardian or custodian and the child's counsel an opportunity to controvert the factual contents and conclusions of the report(s). The Court shall also consider the alternative predisposition report or recommendations prepared by the child or the child's counsel if any.

(6) If the Court finds that the juvenile has committed a status offense, the Court may make and record any of the following order of disposition, giving due weight to the need to preserve the unity of the family whenever possible:

(a) Permit the child to remain with his parents, guardian or custodian subject to those conditions and limitations the Court may prescribe, including the protective supervision of the child by a local social services agency.

(b) Refer the child and his parents, guardian or custodian to an appropriate social services agency for participation in counseling or other treatment program as ordered by the Court.

(c) Transfer legal custody of the child to any of the following if the child is found to have committed a status offense due to a breakdown in the parent-child relationship.

(i) A relative or other individual who, after study by the juvenile probation officer or other agency designated by the Court, is found by the Court to be qualified to receive and care for the child.

(ii) An appropriate agency for placement of the child in an appropriate juvenile shelter care facility.

(d) Any of the provisions in '36.412(5).

(7) The Court may hold a hearing to modify, revoke or extend a disposition order at any time upon the motion of:

(a) The child.

(b) The child's parent, guardian or custodian.

(c) The child's counsel.

(d) The juvenile probation officer.

(e) The prosecutor.

(f) The institution, agency or person vested with legal custody of the child or responsibility for protective supervision.

(g) The Court on its own motion.

SUBCHAPTER VI: COMPULSORY SCHOOL ATTENDANCE

36.601 School Enrollment Requirement.

Except as excused under the state compulsory attendance law, any person having control a tribal child living on the tribal lands shall enroll the child in school.

36.602 Requirement to Attend School.

Except as excused under the state compulsory attendance law, or under a school policy governing school attendance, any person having control of a tribal child living on the tribal lands age six (6) or older shall cause the child to attend the school in which the child is or should be enrolled.

36.603 Truancy Prohibited.

Truancy by a tribal child living on the tribal lands is prohibited.

36.604 Enforcement Officers.

(1) Any Tribal Law Enforcement Officer or school attendance officer may enforce the provisions of this subchapter.

(2) Any person authorized to enforce the provisions of this subchapter may stop and question any person upon reasonable belief that the person has violated this subchapter.

(3) If, during school hours, a person authorized to enforce this subchapter has probable cause to believe that a tribal child is truant, the person shall take the child into custody and transport the child to school and deliver the child to school authorities.

36.605 Cooperation with School.

Each school is encouraged and authorized to contact the Tribal Law Enforcement Department on a daily basis and provide the names, ages and custodial information regarding truant tribal children for that day.

36.606 Enforcement Procedure.

The Juvenile Division shall have jurisdiction over cases brought to enforce this subchapter. Proceedings shall be conducted in accordance with the provisions of subchapter

V.

SUBCHAPTER VII: CURFEW

36.701 Escanaba Tribal Lands.

No tribal child under the age of 16 shall be out of doors after 10:00 p.m. and before 6:00 a.m.

36.702 Hessel Tribal Lands.

No tribal child under the age of 16 shall be out of doors after 10:00 p.m. and before 6:00 a.m.

36.703 Kinross Tribal Lands.

(1) No tribal child under the age of 12 shall be out of doors after 9:00 p.m. and before 5:00 a.m.

(2) No tribal child between the ages of 12 and 16 shall be out of doors after 10:00 p.m. and before 5:00 a.m.

36.704 Manistique Tribal Lands.

No tribal child under the age of 16 shall be out of doors after 11:00 p.m. and before 6:00 a.m.

36.705 Marquette Tribal Lands.

No tribal child under the age of 16 shall be out of doors after 10:00 p.m. and before 6:00 a.m.

36.706 Newberry Tribal Lands.

No tribal child under the age of 16 shall be out of doors after 10:00 p.m. and before 6:00 a.m.

36.707 Sault Ste. Marie Tribal Lands.

No tribal child under the age of 16 shall be out of doors after 10:00 p.m. and before 6:00 a.m.

36.708 St. Ignace Tribal Lands.

No tribal child under the age of 17 shall be out of doors after 10:00 p.m. and before 6:00 a.m.

36.709 Wetmore Tribal Lands.

No tribal child under the age of 16 shall be out of doors after 10:00 p.m. and before 6:00 a.m.

36.710 All Other Tribal Lands.

No tribal child under the age of 16 shall be out of doors after 10:00 p.m. and before 6:00 a.m.

36.711 Other Children.

These curfews listed above shall also apply to all children who are not tribal children but are on tribal land.

36.712 Exceptions to Curfew.

The curfews established in "36.701 through 36.711 shall not apply in the following circumstances:

- (1) The child is accompanied by a parent or other adult with the consent of a parent.
- (2) The child is over 14 years of age and is engaged in employment or traveling to or from employment.
- (3) The child has attended a school, town, tribal or community event at which children are allowed and it is within one hour from the termination of the event.

36.713 Enforcement Procedure.

The Juvenile Division shall have jurisdiction over cases brought to enforce this Subchapter. Proceedings shall be conducted in accordance with the provisions of subchapter V.

SUBCHAPTER VIII: PROVISIONS RELATING TO ALCOHOL AND DRUGS

36.801 Under the Influence: Prohibition.

- (1) No tribal child shall be under the influence of an intoxicant.
- (2) No child who is not a tribal child shall be under the influence of an intoxicant on tribal land.

36.802 Use, Procurement or Possession of Intoxicant.

(1) No tribal child shall use, consume, procure, attempt to procure or be in possession of an intoxicant except pursuant to a prescription for the use of such intoxicant.

(2) No child who is not a tribal child shall use, consume or be in possession of an intoxicant on tribal land, except pursuant to a prescription for the use of such intoxicant.

36.803 Intoxicants: Restrictions Relating to Tribal Children.

(1) No person may procure for, sell, dispense or give away any intoxicant to a tribal child, except pursuant to a prescription for the use of such intoxicant.

(2) No adult may knowingly permit or fail to take action to prevent the illegal consumption of intoxicants by a tribal child on tribal land or premises owned by the adult or under the adult's control.

(3) No adult may intentionally encourage or contribute to a violation of subsections (1) or (2).

36.804 Falsely Representing Age: Prohibition.

No tribal child shall falsely represent his or her age for the purpose of receiving alcohol beverage.

36.805 Disorderly Conduct.

(1) No member or tribal child may in a public or private place engage in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance.

(2) No person who is not a member may in public or private place on tribal land engage in violent, abusive, indecent, profane, boisterous, unreasonably loud or disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance.

(3) The general phrase "disorderly conduct" means conduct having a tendency to disrupt good order and provoke a disturbance. It includes all such acts and conduct as are of a nature to corrupt the public morals or to outrage the sense of public decency, whether committed by words or acts. Conduct is disorderly although it may not be violent, abusive, indecent, boisterous or unreasonably loud, if it is a type which tends to disrupt good order and provoke a disturbance and unreasonably offends the sense of decency and propriety of the community.

(4) The conduct involved need not have resulted in an actual disturbance. The conduct need only be of a type which tends to cause or provoke a disturbance under the

circumstances as they then existed.

36.806 Contributing to the Delinquency of Children.

No member may intentionally encourage or contribute to an act by any child which violates any state or federal criminal law or any ordinance of the Tribe punishable by fine, imprisonment or civil remedial forfeiture.

36.807 Under Age Possession of Tobacco by a Minor.

(1) A person under the age of Eighteen (18) years shall not buy, receive, possess or consume, or attempt to buy, receive or possess any tobacco containing product.

(2) A person violating this Section may be ordered to do the following:

(a) upon a first violation, one session of education, to include traditional use and commercial abuse education, one educational tobacco related assignment, and two hours volunteer work in the community; and

(b) upon a second violation, three weekly educational sessions of one hour each with a local youth education staff member; and

(c) upon a third violation, a minimum of eight hours volunteer work, not to exceed 24 hours; and

(d) upon a fourth and subsequent violations, confinement in an appropriate facility for a period not to exceed one (1) month, or to pay a fine in an amount not to exceed Two Hundred Fifty Dollars (\$250.00), or both.

(3) For the purposes of this section, the term “tobacco containing product” shall include, but not be limited to cigars, cigarettes, snuff, chewing tobacco, and the raw materials necessary to prepare these products.

(4) Affirmative Defense. Any person charged with under age possession of tobacco shall be relieved of all liability for the offense if he or she can demonstrate that the possession of the tobacco was done for religious or ceremonial purposes.

36.808 Enforcement.

(1) Any Tribal Law Enforcement Officer may enforce the provisions of this subchapter.

(2) Any person authorized to enforce the provisions of this Chapter may stop and question any person upon reasonable belief that there is a violation of this Chapter. Any person authorized to enforce this Chapter may issue a citation to any person upon reasonable belief that such person has violated a provision of this Chapter and may seize and hold any property needed as evidence or any property authorized to be seized pursuant to the civil remedial forfeiture provisions of this Chapter.

36.809 Resisting or Fleeing an Officer.

No person may assault, obstruct or flee from any law enforcement officer enforcing or attempting to enforce the provisions of this Chapter.

36.810 Enforcement Procedure.

The Juvenile Division shall have jurisdiction over cases brought to enforce this subchapter. Proceedings shall be conducted in accordance with the provisions of Subchapter V. Jurisdiction is hereby conferred upon the Tribal Court over matters related to the enforcement of this subchapter regarding individuals over eighteen (18) years old.

36.811 Possession or Use of Marijuana by a Minor.

Any person under 18 years of age who possesses, purchases, consumes, obtains, or sells marijuana or marijuana accessories shall be guilty of violating this Code, and may be sentenced to one or more of the following penalties listed below. At sentencing, the Judge shall order the defendant to complete a mandatory substance abuse assessment.

(1) Payment of fine not to exceed \$500;

(2) If the minor completes all sentencing requirements, the Judge retains the discretion to dismiss all charges against the minor.

SUBCHAPTER IX: PARENTAL RESPONSIBILITY

36.901 Parental Responsibility for Violations.

(1) It is the duty and responsibility of the parent with custody of a child to see to it that the child complies with the provisions of this Chapter.

(2) The custodial parent of a child who violates any provision of this Chapter may be considered a party to the violation without proof of actual knowledge of the violation.

36.902 Responsibility for Care Costs.

The custodial parent of any child who is taken into custody for violation of this Chapter shall be liable for the entire cost of any necessary care or sheltering of the child necessitated by the unavailability of such parent to accept and assume the custody and care of the child. Such costs shall be assessed against the custodial parent as a part of any dispositional order entered by the Court.

36.903 Liability for Damages.

(1) The custodial parent or parents of a child shall be held liable for damages to property or for personal injury attributable to a willful, malicious or wanton act of the child not to exceed \$1,000.00.

(2) Maximum recovery from any parent or parents of any child may not exceed the limitation provided in subsection (1) for any one act of such child, and if two or more children of the same parent or parents commit the same act, recovery shall not exceed the aggregate \$1,000.00.

(3) Such damages may be assessed by the Court in any dispositional order in any case brought against the child or parent by the Tribe.

(4) This section shall not limit the amount of damages recoverable by an action against the child or parent except that any amount so recovered shall be reduced and apportioned by the amounts received from the parent or parents under this section.

36.904 Contempt.

Any parent who does not comply with any Court orders pursuant to this Chapter has committed the offense of Contempt. It shall be punishable pursuant to '80.105. This shall include a parent failing to assist their child in complying with any order of the Court.

SUBCHAPTER X: ADDITIONAL MATTERS

36.1001 Juvenile Division Records.

A record of all hearings under this Chapter shall be made and preserved. All Juvenile Division records shall be confidential and shall not be open to inspection to any but the following:

- (1) The child.
- (2) The child's parent, guardian or custodian.
- (3) The child's counsel.
- (4) The Juvenile Division personnel directly involved in the handling of the case.
- (5) Any other person by order of the Court, having a legitimate interest in the particular case or the work of the Court.
- (6) The prosecutor.
- (7) A federal prosecuting attorney for the limited purpose of indictment of the juvenile in Federal Court by U.S. Attorneys as required under 18 U.S. C. Section 5032.

36.1002 Law Enforcement Records.

Law enforcement records and files concerning a child shall be kept separate from the records and files of adults. All law enforcement records shall be confidential and shall not be open to inspection to any but the following:

- (1) The child.
- (2) The child's parent, guardian or custodian.
- (3) The child's counsel.
- (4) Law enforcement personnel directly involved in the handling of the case.
- (5) The Juvenile Division personnel directly involved in the handling of the case.
- (6) Any other person by order of the Court, having a legitimate interest in the particular case or the work of the Court.
- (7) The prosecutor.

36.1003 Destruction of Records.

When a child who has been the subject of any Juvenile Division proceeding reaches his eighteenth (18th) birthday, the Court shall order the clerk of the Court to destroy both the law enforcement records and the Juvenile Division records. The clerk of the Court shall respond to all record inquiries as if no records had ever existed.

36.1004 Juvenile Appeals.

Any party to a Juvenile Division hearing may appeal a final Court order, including all transfer, adjudication and/or disposition orders pursuant to Chapter 82 of the Tribal Code.

36.1005 Cooperation and Grants.

The Juvenile Division is authorized to cooperate fully with any federal, state, tribal, public or private agency in order to participate in any diversion, rehabilitation, or training program(s) and to receive grant-in-aid to carry out the purposes of this Chapter. This authority is subject to the approval of the Sault Ste. Marie Tribal Board of Directors if it involves an expenditure of tribal funds.

36.1006 Social Services.

The Juvenile Division shall utilize such social services as may be furnished by any tribal, federal or state agency provided that it is economically administered without unnecessary duplication and expense.

36.1007 Contracts.

The Juvenile Division may negotiate contracts with tribal, federal or state agencies

and/or departments on behalf of the Tribal Board of Directors for the care and placement of children whose status is adjudicated by the Juvenile Division subject to the approval of the Tribal Council before the expenditure of tribal funds.