

MATCH-E-BE-NASH-SHE-WISH BAND OF POTTAWATOMI INDIANS
JUVENILE JUSTICE ORDINANCE

Section 1. SHORT TITLE

This Ordinance shall be titled "Juvenile Justice Ordinance".

Section 2. PURPOSE

The Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (MBPI), referred to in this Ordinance as "the Tribe", has determined that:

- A. Juveniles are valuable Tribal resources and the welfare of juveniles is a vital concern of the Tribe;
- B. It is essential that Tribal resources, identity, and culture be preserved by ensuring enhancement and strengthening of the family as the primary means of securing a vital Tribal community;
- C. The best interests of the Tribal Community and its juveniles are served when the juveniles of the Tribe receive the care and guidance necessary for their spiritual, emotional, mental, and physical development, all of which will prepare them to become contributing Citizens of the Tribe;
- D. Tribal Court, whenever practical, is preferable to state court for consideration of matters involving juveniles because the Tribal Court is best able to resolve the concerns and provide juveniles with the care and guidance necessary for their well-being;
- E. When the Tribal Court must make a placement outside of the home, the best interests of the Tribal Community and its juveniles are served by providing for their care and placement in an environment which will ensure that juveniles receive the care and guidance necessary for their spiritual, emotional, mental, and physical development; and
- F. When concerns involving juveniles arise, the best interests of the Tribal Community are served if the Tribal Court has jurisdiction over all persons in the family or household who is a part of the concern giving rise to the jurisdiction, or who may be part of the solution to the concern.

Section 3. CUSTOM AND TRADITION OF THE TRIBE

The provisions of this Ordinance will be carried out through the wisdom, truth, love, respect, bravery, honesty, and humility as given to us by the teachings of our Seven Grandfathers.

- A. Mbwakawen (Wisdom) - Cherish knowledge, wisdom is used for the good of the people.
- B. Débwéwen (Truth) - Be true in everything you do. Be true to yourself and to your fellow humans.
- C. Dbandewen (Love) - Love your brothers and sisters and share with them.
- D. Mnadéndemwen (Respect) - Give respect to expect respect. Respect all persons and all things created.
- E. Wédaséwen (Bravery) - Do what is right, even in the most difficult times.
- F. Gwékwadsewen (Honest) - Be honest in every action and provide good feelings in your heart.
- G. Énbeséndowen (Humility) - Know that you are equal to everyone else, no better, no less.

Section 4. DEFINITIONS

For purposes of this Ordinance, the following definitions shall apply:

- A. **"Adult"** means a person eighteen (18) years of age or older.
- B. **"Citizen"** means an enrolled member of the MBPI.
- C. **"Counsel"** means any licensed attorney admitted to practice in Tribal Court, who as an officer of the Court, provides legal assistance to any party during the course of any proceeding under this Ordinance.
- D. **"Custodian"** means one who has physical custody of a juvenile and is providing food, shelter, and supervision to that juvenile.
- E. **"Delinquent Act"** means any act by a juvenile identified under the "Juvenile in Need of Correction" and "Juvenile in Need of Supervision" definitions of this Ordinance.
- F. **"Detention"** means the placement of a juvenile in a physically restrictive facility.
- G. **"Diversion"** means a method of dealing with a juvenile without the need of a formal court proceeding.
- H. **"Guardian"** means a person other than the juvenile's parent, appointed by a court of competent jurisdiction, who is legally responsible for that juvenile.
- I. **"Incident Report"** means a report to the Prosecuting Attorney containing allegations indicating that a juvenile, over which the Tribal Court has jurisdiction, has committed a delinquent act.
- J. **"Juvenile"** means a person under eighteen (18) years of age.
- K. **"Juvenile in Need of Correction"** means any juvenile who commits the following acts:

1. A violation of any Tribal criminal ordinances; or
 2. Possession or consumption of alcohol or tobacco (this does not include the use of tobacco for traditional purposes).
- L. **"Juvenile in Need of Supervision"** means any juvenile who commits the following acts:
1. A juvenile who repeatedly absents himself or herself from school or other learning program intended to meet the juvenile's educational needs, or repeatedly violates rules and regulations of the school or other learning program;
 2. A juvenile who repeatedly disobeys reasonable and lawful commands or directives of his parent, legal guardian, or other custodian; or
 3. A juvenile who willfully and voluntarily absents himself from his or her home without the consent of his or her parent, guardian, or other legal custodian.
- M. **"Juvenile Petition"** means the formal document that commences proceedings in the Court.
- N. **"Least Restrictive Alternative"** means restrictions placed on the juvenile must be reasonably related to the Court's objective of correcting the delinquent behavior, and must be the least intrusive manner of achieving that objective.
- O. **"Notice"** means the method by which the Court informs the parties, attorneys, and others of the date, time, and place of proceedings to be conducted by the Court.
- P. **"Parent"** means the mother, father or legal guardian of a juvenile who has the responsibility for the health, welfare, care, maintenance and supervision of the juvenile at the time the juvenile allegedly committed the delinquent act.
- Q. **"Presenting Officer"** means the attorney who represents the MBPI in all matters related to this Ordinance and acts as the Presenting Officer in Tribal Court.
- R. **"Summons"** means the instrument with which the Court directs a party to appear before the Court.
- S. **"Tribal Court"** and **"Court"** means the Tribal Court of the MBPI.
- T. **"Tribal Trust Land"** means all lands held in trust for the Tribe by the United States government over which the Tribe exercises civil and criminal jurisdiction.
- U. **"Tribe"** means the Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians (MPBI).

Section 5. JURISDICTION AND COURT AUTHORITY

- A. **Jurisdiction.** The Tribal Court system shall have jurisdiction over Juveniles in Need of Correction and Juveniles in Need of Supervision proceedings, if:

1. The alleged offense occurred on Tribal land and the juvenile's primary residence is on Tribal trust lands;
 2. The juvenile commits an offense while on a Tribally-sponsored event off Tribal trust lands; or
 3. A juvenile case is transferred to Tribal Court from any other court.
- B. **Jurisdiction over the Family or Household.** The Tribal Court shall have jurisdiction over all members of the family or household who are a part of the concerns giving rise to jurisdiction, or who may be a part of the solution to the concerns.
- C. **Transfers from Other Courts.** The Tribal Court may accept transfers of a case from any other court if the alleged Juvenile in Need of Correction or Juvenile in Need of Supervision is a juvenile who resides on Tribal trust lands.
- D. **Transfers to Other Courts.** The Tribal Court may transfer a case to another court if the alleged offense occurred on Tribal land and the alleged Juvenile in Need of Correction or Juvenile in Need of Supervision does not reside on Tribal land, and the other court is willing to accept transfer.
- E. **Adjudication Classification.** No adjudication of the status of any juvenile under the jurisdiction of the Court shall be deemed criminal.
- F. **Closed Proceedings.** Juvenile proceedings shall be closed to the general public to protect the privacy interests of the individuals and families involved.
- G. **Authority to Cooperate.** The Court is authorized to cooperate with any court or federal, state, tribal, public, or private agency; to participate in any diversion, rehabilitation, training programs, or other service programs; and to receive grants-in-aid to carry out the purposes of this Ordinance.
- H. **Least Restrictive Alternative.** The least restrictive alternative applies to all placement disposition actions taken by the Court under this Ordinance.
- I. **Court Records.**
1. A record of all hearings under this Ordinance shall be made and preserved.
 2. All Court records shall be confidential, and shall only be open to review by the following:
 - a. The juvenile or his legal representative;
 - b. The juvenile's parent(s), guardian, custodians or their legal representatives;
 - c. The Presenting Officer;
 - d. The Tribal Probation Officer;

- e. The Court staff; and
- f. The Judge or Justices involved in the case.

J. **Sealing Court Records.** When a juvenile who has been the subject of any proceeding before the Court attains his/her twenty-first (21st) birthday, the Court shall seal the Court records from review or release, absent a showing of good cause relating to that juvenile.

K. **Contempt of Court** as applicable to this ordinance only.

1. Willful disobedience of, or willful interference with an order of the Court constitutes contempt of court.
2. The Court may fine an adult for contempt of court with a fine not to exceed one thousand dollars (\$1,000.00), or may order detention to compel compliance.
3. A juvenile may be punished for contempt of court with extension of probation, additional probation conditions, and/or a fine not to exceed five hundred dollars (\$500.00) or may order detention to compel compliance.

L. **Medical Examination.** The Court may order any medical examination necessary for the proceedings of a juvenile who is alleged to be Juvenile in Need of Correction or Juvenile in Need of Supervision if issues of competence to stand trial or insanity are raised by the defense, or for any other reason that the Court deems appropriate. Reports shall be available to the defense and Presenting Officer.

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

N. **Appeal.**

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

Section 6. PROCEDURAL RIGHTS; NOTICE REQUIREMENTS

A. **Applicability.** The notice and procedural rights listed in this Ordinance shall be afforded to parties in each of the following proceedings:

1. Preliminary Hearing under Section 8(G);
2. Transfer to the Adult Division of Tribal Court under Section 8(H);
3. Trial under Section 8(J); and
4. Disposition Hearing under Section 8(M).

B. **Notice.**

1. Notice of proceedings shall be given to:
 - a. The juvenile;
 - b. The juvenile's parent(s), guardian, custodian or legal representative; and
 - c. All legal counsel of record.
2. Notice shall be given when a time for the proceedings has been established, provided at least ten (10) days is given before any non-preliminary hearing except in cases of emergency, provided further that notice is given as soon as possible in the case of a preliminary hearing or in the event of an emergency.
3. The notice shall contain:
 - a. The name of the Court;
 - b. The title of the proceeding;
 - c. A brief statement of the substance of the allegations against the juvenile;
 - d. The date, time, and place of the proceeding; and
 - e. A statement of the right to counsel, as set forth in Section 6(D) of this Ordinance.

C. **Summons.**

1. At least ten (10) days prior to a trial or disposition hearing, the Court shall issue summons to:
 - a. The juvenile;
 - b. The juvenile's parent(s), guardian, legal representative, or custodian;
 - c. Any person the Court believes necessary for proper adjudication of the matter(s) before the Court; and

- d. Any person the juvenile believes necessary for proper adjudication of the matter(s) before the Court, subject to the Court's discretion.
 2. The summons shall contain the name of the Court and title of the proceedings; and the date, time, and place of the hearing.
 3. A copy of the juvenile Petition shall be attached to the summons.
 4. The summons shall be served in the following order of preference:
 - a. Hand delivery to the person, by a Tribal Law Enforcement Officer or appointee of the Court; or
 - b. First (1st) Class mail, if the summons cannot be served upon the person.
 5. If a person who has been issued a summons fails to appear at the hearing, the Court shall hold the person in contempt of court, unless good cause is shown why that person did not appear.
- D. Rights of Parties.
 1. Right to Counsel:
 - a. The Judge shall inform the juvenile, the juvenile's parent(s), guardian, or custodian of their right to retain counsel by reading the following statement: "you have a right to have an attorney represent you at this hearing. However, you or your family must pay any fees for such representation."
 - b. If the parties are unable to pay for an attorney, the Judge shall make known to them any available services providing representation of which the Judge is aware.
 - c. If the parties appear at the hearing without an attorney, the Judge may grant a continuance if they need additional time to seek an attorney.
 2. The right to a trial by a Judge (bench trial).
 3. The juvenile need not be a witness against himself/herself and no inferences can be made if the juvenile exercises the right to remain silent.
 4. A parent, guardian, or custodian may not be compelled to give testimony against him/herself or against the juvenile, consistent with the Tribal Constitution and the Indian Civil Rights Act.
 5. The Court shall give the juvenile, the juvenile's parent(s), legal representative, or custodian, the opportunity to introduce evidence, to be heard on their, own behalf, and to examine all witnesses.

Section 7. PARENTAL RESPONSIBILITY

A. Parental Responsibility.

1. The parent of any juvenile has an on-going responsibility to exercise reasonable control and supervision over the juvenile and prevent the juvenile from committing or participating in the commission of any delinquent act.
2. The parental responsibility to exercise reasonable control includes, but not limited, to the following duties:
 - a. To keep drugs out of the home and out of the possession of the juvenile, except those drugs duly-prescribed by a licensed physician or other authorized medical professional;
 - b. To keep firearms out of the possession of the juvenile except those used for hunting in accordance with Tribal, local and state law governing juveniles hunting under the supervision of an adult;
 - c. To know the curfew law of the MBPI and require the juvenile to observe the curfew laws;
 - d. To require the juvenile to attend regular school sessions and to prevent the juvenile from being absent from school without parental or school permission;
 - e. To prevent the juvenile from maliciously or willfully damaging, defacing or destroying real or personal property belonging to others, including that belonging to any governmental entity of the Tribe;
 - f. To prevent the juvenile from engaging in theft of property or keeping in his or her possession property known to be stolen;
 - g. To ensure the juvenile adheres to the rules of safety and regulation regarding use of any four or two-wheeled recreational vehicles; and
 - h. To make reasonable efforts to prevent the juvenile from possession or consumption of alcohol.

B. Notification of Parent and Court. If a juvenile is arrested or detained by Tribal Law Enforcement, Tribal Law Enforcement shall notify the juvenile's parent, guardian, or custodian and the Court as soon as reasonably possible. Tribal Law Enforcement shall maintain a record of their notification efforts.

C. Violation and Penalty.

1. If the juvenile of a parent residing within the jurisdiction of the Tribe commits a delinquent act, the parent shall be civilly liable for a violation of this Section if:

- a. It is proven that any action, word or non-exercise of parental responsibility by the parent encouraged, caused or allowed to occur the commission of the delinquent act by the juvenile; or
 - b. It is proven that the parent knew or reasonably should have known that the juvenile was likely to commit a delinquent act, but failed to take timely and appropriate action to prevent the commission of the delinquent act by the juvenile. If at any time within forty-five (45) days following the giving of notice as provided in Section B above, the juvenile to whom said notice related or applied commits a delinquent act as provided in this article, it shall be presumed that the juvenile committed the delinquent act with the knowledge, allowance, permission or sufferance of the parent.
2. Any person in violation of any subsection of the Article may be subject to a fine assessed by the Court not to exceed five hundred (\$500.00) dollars.
- D. **Recovery of Damages from Parents.** Any party aggrieved by the actions of a juvenile, who has not been emancipated, may recover reasonable compensatory damages in Tribal Court against the parents or parent of the juvenile, living with his or her parents or parent, who has maliciously or willfully destroyed real, personal, or mixed property of a party, or who has maliciously or willfully caused bodily harm or injury to a person or an animal.

Section 8. JUVENILE PROCEDURE

- A. **Incident Report.** Tribal Law Enforcement may file an Incident Report with the Presenting Officer. The Incident Report shall contain:
- 1. Name, age, date of birth, address, name of custodial parent or guardian, Tribal affiliation, and Tribal ID number if applicable;
 - 2. A concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged act(s) occurred; and
 - 3. A list of witnesses known to the person who files the complaint.
- B. **Juvenile Petition.** Proceedings under this Ordinance shall commence upon the filing of a juvenile petition by the Presenting Officer on behalf of the Tribe. The juvenile petition shall include:
- 1. The name, birth date, address, Tribal affiliation and ID# if applicable;
 - 2. The names and addresses of the juvenile's parent(s), guardians, or custodian;
 - 3. Citation to the specific provision(s) of this Ordinance which gives the Court jurisdiction of the proceedings;
 - 4. Citation to the Tribal criminal statutory provision(s) which the juvenile is alleged to have violated;

5. If the juvenile is in detention or shelter care, the place of detention or shelter care and the time he/she was taken into custody;
 6. A statement of the facts which brings the juvenile within the jurisdiction of the Court; and
 7. A list of witnesses known to the Tribe upon filing of the juvenile petition.
- C. **Warrant.** The Court may enter an order called a warrant, directing that a juvenile be taken into custody if:
1. The Court finds probable cause to believe that the juvenile committed the delinquent act alleged in the petition and there is probable cause to believe that the juvenile will fail to appear for a hearing on the matter; or
 2. The juvenile is not taken into custody she/he is likely to endanger himself/herself or others.
- D. **Custody.** A juvenile may be taken into custody by a law enforcement officer if:
1. The officer has reasonable cause to believe that a delinquent act has been committed and that the juvenile has committed the delinquent act; or
 2. A warrant pursuant to Section 8(C) of this Ordinance has been issued for the juvenile.
- E. **Law Enforcement Officer's Duties.** A law enforcement officer who takes a juvenile into custody, pursuant to Section 8(D) of this Ordinance, shall proceed as follows:
1. Explain the following rights to any juvenile taken into custody prior to questioning:
 - a. The juvenile has a right to remain silent;
 - b. Anything the juvenile says can be used against the juvenile in court; and
 - c. The juvenile has the right to the presence of his parent or guardian, and/or attorney during questioning.
 - d. Release the juvenile to the juvenile's parent(s), guardian, or custodian and give such counsel and guidance as may be appropriate, unless shelter care or detention is necessary because:
 - i. The juvenile is in danger of injury;
 - ii. Is pending placement;
 - iii. The juvenile is under the influence of alcohol or controlled substances; or
 - iv. The juvenile will not cease illegal conduct and release is likely to result in injury to the juvenile or others.

- e. If the juvenile is not released, an officer shall make immediate and recurring efforts to notify the juvenile's parent(s), guardian, or custodian to inform them that the juvenile has been taken into custody.
- f. If the juvenile is not released, the juvenile shall be placed in detention or shelter.

F. **Detention.** A juvenile alleged to be a Juvenile in Need of Correction or Juvenile in Need of Supervision may be detained pending a court hearing in an approved Tribal or State of Michigan detention facility.

- 1. A juvenile who is sixteen (16) years of age or older may be detained in a jail or other licensed detention facility, used for the detention of adults only if:
 - a. A facility in Section 7(N) is not available or would not assure adequate supervision of the juvenile;
 - b. Detention is in a cell separate from adults; and
 - c. Adequate supervision is provided twenty-four (24) hours a day.
- 2. A juvenile who is sixteen (16) years of age or older may also be detained in a jail or other licensed detention facility used for the detention of adults if that juvenile is intoxicated, provided that:
 - a. A juvenile detention facility is not immediately available or is not equipped to hold/supervise the intoxicated youth;
 - b. Detention is in a cell separate from adults; and
 - c. The juvenile is released as soon as he or she is sober, unless further detention under Section 8(D) is warranted.

G. **Preliminary Hearing.**

- 1. If a juvenile has been released to his/her parent(s), guardian, or custodian, the Court shall conduct a preliminary hearing within ten (10) days of the filing of the juvenile petition to determine whether probable cause exists to believe that the juvenile committed the alleged delinquent act(s).
- 2. If a juvenile is placed in custody or detention the Court shall conduct a preliminary hearing within seventy-two (72) hours of the placement for the purpose of determining:
 - a. Whether probable cause exists to believe that the juvenile committed the alleged delinquent act; and
 - b. Whether continued detention is necessary pending further proceedings.

- c. If the juvenile's parent(s), guardian, or custodian is not present at the preliminary hearing, the Court shall make an inquiry into what efforts have been made to notify and to obtain the presence of the parent(s), guardian, or custodian. If it appears that further efforts are likely to produce the appearance of the juvenile's parent(s), guardian, or custodian, the Court shall recess for not more than twenty-four (24) hours and direct the Presenting Officer to make continued efforts to obtain the presence of the juvenile's parent(s), guardian, or custodian, if it does not appear that further efforts are likely to produce the parent(s), guardian, or custodian, or if it appears that the parent(s), guardian, or custodian is/are unable or unwilling to provide effective support or guidance to the juvenile during the pendency of the Juvenile in Need of Correction or Juvenile in Need of Supervision proceedings, the Court shall appoint an attorney to serve until adjudication and disposition of the petition.
3. The Court shall advise the juvenile as follows:
 - a. Explain the nature of the proceedings.
 - b. Read the allegations in the petition unless waived.
 - c. Advise the juvenile of right to an attorney.
 - d. Advise the juvenile of the privilege against self-incrimination and that any statement by the juvenile may be used against the juvenile.
 - e. Advise the juvenile that parents, guardians, or custodians may not be compelled to give testimony against himself or herself or the juvenile.
 - f. Advise the juvenile that he or his legal representative may introduce evidence, to examine (confront) witnesses against him or her, and be heard on their own behalf.
 - g. The circumstances that gave rise to the juvenile petition and/or the taking of the juvenile into custody; and
4. If the juvenile admits the allegations in the juvenile petition, the Court shall proceed to the disposition hearing only if the Court finds:
 - a. The juvenile fully understands his/her rights as set forth in Section 8(E) of this Ordinance and fully understands the potential consequences of his/her admission; and
 - b. The juvenile voluntarily, knowingly, and intelligently admits to all facts necessary to constitute a basis for Court jurisdiction.
5. If the juvenile denies the allegations in the juvenile petition, the Court shall hear testimony concerning:

- a. The circumstances that gave rise to the juvenile petition and/or the taking of the juvenile into custody; and
 - b. The need for detention.
6. If the Court finds that probable cause exists to believe that the juvenile committed the delinquent act:
 - a. The juvenile shall be ordered to appear at a trial on a date and at a time set by the Court; and
 - b. The juvenile shall be released to his/her parent(s), guardian, or custodian unless the alleged act is serious enough to require detention. The Court may order the juvenile to detention, if:
 - i. There is reasonable cause to believe that the juvenile will run away and/or be unavailable for further proceedings; or
 - ii. There is reasonable cause to believe that the juvenile will commit a serious act causing damage to persons or property.
7. If a juvenile is released to his parent(s), guardian, or custodian, the Court may impose conditions on the release which may include but not limited to: the posting of a bond; electronic monitoring; house arrest; travel restrictions; mandatory attendance at school; no contact with named individuals; or a juvenile may be prohibited from participating in non-essential Tribal programs or entering designated Tribal property.
8. The Court may release a juvenile to a relative or other responsible adult Tribal member, if the parent(s), guardian, or custodian consents to the release. If the juvenile is fourteen (14) years of age or older, the juvenile and the juvenile's parent(s), guardian, or custodian must consent to the release.
9. If the juvenile admits to the allegations, the Court may take the plea under advisement and refer the juvenile for a pre- disposition investigation report. The Court will proceed with the disposition and place the juvenile on probation. If the juvenile successfully completes the terms and conditions of probation within the prescribed time, the Court may dismiss the matter without entering a judgment of disposition. If the juvenile does not successfully complete probation the Court will then enter a judgment of disposition into the records of the Court.
10. If the Court does not find probable cause to believe that the juvenile committed the alleged delinquent act, the petition shall be dismissed and the juvenile released.

H. Transfer to the Adult Division of Tribal Court.

1. If the juvenile is at least sixteen (16) years of age at the time of the alleged delinquent act, the Presenting Officer shall have the option of filing the action as a Juvenile in Need of Correction proceeding or as an adult criminal matter. If the juvenile is between the ages of fourteen (14) and sixteen (16) and is alleged to have committed an act that would have been considered a crime if committed by an adult, the Presenting Officer may file a petition requesting the Court to transfer the juvenile to the Adult Division of the Court. No juvenile under the age of fourteen (14) years of age shall be transferred to the Adult Division of the Court.
2. The Court shall conduct a hearing to determine whether jurisdiction of the juvenile should be transferred to the Adult Division of the Court.
3. The Court shall hold a transfer hearing within ten (10) days after the petition to transfer to the adult division is filed.
4. Written notice of the transfer hearing shall be given to the juvenile and the juvenile's parent(s), guardian, legal representative, or custodian at least seventy-two (72) hours prior to the hearing
5. Prior to the hearing, the Court shall order the MBPI Department Health and Human Services to conduct an investigation and prepare a written report to be submitted to the Court.
6. The following factors shall be considered in determining whether to transfer jurisdiction of the juvenile to the Adult Division of the Court:
 - a. The seriousness of the offense and the offense would need to be violent in nature and considered a felonious crime if committed by an adult; and
 - b. The juvenile's age, mental and physical condition, past record of offenses, and responses to previous Court efforts at rehabilitation.
7. The Court may transfer jurisdiction of the juvenile to the Adult Division of the Court if the Court finds clear and convincing evidence that both of the following circumstances exist:
 - a. There are no reasonable prospects for rehabilitating the juvenile through resources available to the Court; and
 - b. The alleged offense is serious and constitutes a substantial danger to the public.
8. When a juvenile is transferred to the Adult Division of the Court, the Court shall issue a written transfer order containing reasons for the order. The transfer order constitutes a final order for purposes of appeal.

I. Diversion.

1. The Presenting Officer may choose to divert the juvenile rather than initiate a formal Juvenile in Need of Correction or Juvenile in Need of Supervision proceeding.
2. The Presenting Officer shall hold an informal conference with the juvenile and the juvenile's parent(s), guardian or custodian to discuss diversion in lieu of filing a juvenile petition if:
 - a. The admitted facts bring the case within the jurisdiction of the Court;
 - b. Diversion of the matter would be in the best interests of the juvenile and the Tribe; and
 - c. The juvenile's parent(s), guardian or custodian voluntarily consents to the diversion after they have received an explanation of their rights.
3. This Section does not authorize the Presenting Officer to compel involuntary action of the parties involved.
4. The Presenting Officer shall set forth in writing the diversion agreed to by the parties.
5. Any disposition arranged through the diversion shall be concluded within six (6) months unless an extension is agreed to by all parties.

J. Trial. The Court shall conduct a bench trial for the purpose of determining whether the Court has jurisdiction over the juvenile. The trial shall be closed to the public. The Court shall hear testimony concerning the circumstances that give rise to the juvenile petition.

K. Burden of Proof.

1. If the allegations of the Juvenile in Need of Correction petition the Court shall find that the juvenile is indeed in need of correction and schedule a disposition hearing.
2. If the allegations of the Juvenile in Need of Supervision petition are sustained by clear and convincing evidence, the Court shall find that the juvenile is a Juvenile in Need of Supervision and schedule a disposition hearing.
3. A finding that the juvenile is a Juvenile in Need of Correction or Juvenile in Need of Supervision shall constitute a final order for purposes of appeal.

L. Trial Continuances. Continuances of a trial may be granted upon:

1. Motion of the juvenile for good cause shown; or
2. Motion of the Presenting Officer that material evidence or witnesses are unavailable, a finding by the Court that the Presenting Officer has exercised due diligence to obtain the evidence or appearance of witnesses, and reasonable grounds

exist to believe that the evidence will become available or that the witnesses will appear.

M. Disposition Hearing.

1. A disposition hearing shall take place not more than twenty-eight (28) days after the trial or after the admission of responsibility at the preliminary hearing.
2. The Court shall take testimony and receive evidence concerning proper disposition at the hearing.
3. The Court shall consider the pre-disposition report submitted by the MBPI Department of Health and Human Services. Prior to the hearing, the affected parties shall be given an opportunity to review all reports and supporting documentation. During the hearing, the parties shall have the opportunity to controvert the factual contents and the conclusions of any reports. The Court shall also consider the alternative predisposition report prepared by the juvenile or the juvenile's legal representative.
4. The judgment of disposition order shall constitute a final order for purposes of appeal.

N. Disposition Alternatives. The dispositional focus of a youth depends upon whether the youth is found to be a Juvenile in Need of Correction as defined in Section 4(K) or a Juvenile in Need of Supervision as defined in Section 4(L) in all cases the Court shall look to methods of rehabilitation of both the juvenile and the family unit. The dispositional focus of a youth found to be a Juvenile in Need of Correction is the reformation and rehabilitation of the offender and the family as well as the reintegration of the Juvenile in Need of Correction into the community. The dispositional focus of a youth deemed to be a Juvenile in Need of Supervision is to pursue the best interest of the youth while strengthening family and community solutions to the youth misconduct. If a juvenile has been found to be a Juvenile in Need of Correction or Juvenile in Need of Supervision, the Court may make the following disposition for any term until the juvenile reaches the age of nineteen (19) and shall include rehabilitation services for the youth and his or her family, i.e. mental health, substance abuse, educational services, etc.:

1. Place the juvenile on probation subject to conditions set by the Court;
2. Place the juvenile in a detention and/or a treatment facility with an agency designated by the Court;
3. Order the juvenile to perform community service.
4. Order the juvenile to pay restitution, court fines and court costs including costs related to detention, or to provide restorative services to the injured party or parties. The Court may access the juvenile's per capita trust or distributions, if otherwise allowed by the Tribe's Revenue Allocation Plan, to provide restitution upon the

motion of the Presenting Officer or an aggrieved party based upon proper proofs offered at an evidentiary hearing; or

5. Order any other measure the Court deems necessary and proper to correct the behavior of the Juvenile in Need of Correction or Juvenile in Need of Supervision to ensure the safety of the community.

O. Modification of Disposition Order. A disposition order of the Court may be modified, for good cause, upon a showing of a change of circumstances. The Court may modify an order of disposition at any time, upon motion of the following:

1. The juvenile;
2. The juvenile's parent(s), guardian, or custodian; or
3. The Presenting Officer;

Section 9. SAVINGS CLAUSE

In the event that any section, subsection or phrase, this Ordinance is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the MBPI, such part shall be considered to stand alone and to be deleted from this Ordinance, the entirety of the balance of the Ordinance to remain in full and binding force and effect so long as the overall intent of the Ordinance remains intact.

Section 10. EFFECTIVE DATE

Effective upon approval by the MPBI Tribal Council on September 19, 2019.