

**Chapter 5.1**

**CHILD PROTECTION AND GENERAL WELFARE**

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[HISTORY: Adopted by the Tribal Council of the Match-E-Be-Nash-She-Wish Band of Pottawatomi **Indians** (Gun Lake Tribe) 7-31-2014 by Res. No. 14-857; Amended on XX/XX/2025 by Res. No. 25-XXXX. Amendments noted where applicable]

ARTICLE I  
General Provisions

**§ 5.1-1. Findings; purpose.**

- A. Children are the Tribe's most vital and cherished resource. The Tribe's future depends on the health and well-being of its children. Children have a sacred right to receive the care and guidance necessary for their spiritual, emotional, mental and physical development. Feeling pride from their Pottawatomi identity will help them grow into strong, healthy responsible adult tribal citizens.
- B. As a sovereign nation, the Tribe is enacting this chapter with the purpose of providing for children in need of protection and the general welfare needs of children. This chapter will be liberally construed to fulfill the following purposes:
- (1) To provide for the welfare, care and protection of the children and families within the jurisdiction of the Match-E-Be-Nash-She-Wish Band of Pottawatomi ~~Indians~~ (~~MBPT~~hereinafter ~~Tribe~~);
  - (2) To preserve the unity of the family by separating the child from his or her parents only when necessary;
  - (3) To serve the cultural, spiritual, emotional, mental, and physical welfare of the child and the interest of the ~~MBPT~~Tribe in preventing the abuse, neglect and abandonment of children;
  - (4) To provide a continuum of services for children and their families with an emphasis on prevention, early intervention and community-based options;
  - (5) To secure the rights of, and ensure fairness to, the children, parents, guardians, custodians and other parties who are subject to the jurisdiction of the ~~MBPT~~Tribe;
  - (6) To preserve and strengthen the child's cultural and ethnic identity whenever possible;
  - (7) To recognize and employ the tribal customs and traditions of the ~~MBPT~~Tribe regarding child-rearing; and
  - (8) To provide procedures for intervention in state court proceedings regarding Indian children and for transfer of jurisdiction over Indian children from state and other tribal courts to the Gun Lake Tribal Court.

**§ 5.1-2. Authority.**

Under Article VII, Section 1(n), of the ~~MBPT~~Tribe's Constitution, the Tribal Council has been granted the authority "to safeguard and promote the peace, safety, morals, and general welfare of the Tribe." Under the authority granted by the ~~MBPT~~Tribal Constitution, the Tribal Council hereby establishes the Match-E-Be-Nash- She-Wish Band of Pottawatomi ~~Indians~~ Child Protection ~~and General Welfare Ordinance~~Act, which may be cited as the "Child Protection Act."

**§ 5.1-3. Definitions.**

The following terms, whenever used or referred to in this chapter, will have the following respective meanings, whether used in the singular or plural forms:

ACT – Means this Child Protection Act.

ACTIVE EFFORTS — More than reasonable efforts and requires an energetic and ~~aggressive~~ diligent

course of action to prevent the removal of a child or to reunite a child with his/her family based upon the Tribe's cultural norms and utilization of tribal resources. Active efforts mean more than just a referral to services without actively engaging the family. This means ~~aggressive~~ diligent actions that assist in alleviating the problems or issues that might lead or have led to the removal of the child from the family. Examples of active efforts include:

- A. Identifying and implementing appropriate services to help the parents to overcome barriers to compliance with those services;
- B. Identifying the community resources offering housing, financial, and transportation assistance; providing in-home support; providing information about those resources to the child's family; and actively offering assistance in accessing those resources.

**ADULT** — A person 18 years of age or older, or a person who has been emancipated by order of a court of competent jurisdiction.

**BEST INTERESTS OF THE CHILD** — The standard used by the Gun Lake Tribal Court to determine the well-being of a child in a particular case, through the evaluation of the following factors:

- A. Physical, mental, emotional, spiritual, and familial needs of the child;
- B. Providing a stable, nurturing environment for the child;
- C. Meeting the unique individual needs of the child; and
- D. Any other factor considered by the Gun Lake Tribal Court to be relevant to a ~~particular child in a child protection, guardianship or conservatorship matter under this chapter~~ subject to the jurisdiction of the Court under this Act.

**CHILD** — A person who is less than 18 years of age and has not been emancipated by order of a court of competent jurisdiction.

**CHILD ABUSE** — Verbal or physical conduct involving or in the presence of a child that is harmful to the child, including, without limitation:

- A. Physical injury, including bruising, bleeding, malnutrition, failure to thrive, burns, fractures of any bone, subdural hematoma, soft tissue swelling, or death suffered by a child that is not caused by accident;
- B. Any case in which a child is subjected to sexual assault, sexual contact, sexual molestation, sexual exploitation, or prostitution;
- C. Mental or emotional abuse suffered by a child; or
- D. Any other harm or threatened harm to a child that occurs through nonaccidental action by any person responsible for the child's health or welfare.

**CHILD IN NEED OF PROTECTION** — A child:

- A. Who has no parent, guardian, or custodian with legal authority available who is willing and able to care for him or her;
- B. Who has suffered or is likely to suffer child abuse;
- C. Who has suffered or is likely to suffer neglect from a parent, guardian, or custodian, regardless of whether or not the child's health and welfare has been adequately provided for by another person;
- D. Who has committed delinquent acts as a result of pressure, guidance, approval or failure to properly supervise by the parents, guardian, or custodian of the child;

- E. Who is born addicted to alcohol or to any controlled substance;
- F. Whose parent, guardian, or custodian has been convicted of a violent or criminal sexual crime against another parent, legal guardian, or custodian, or against a sibling of the child;
- G. Whose custodial parent, or guardian, or custodian has been convicted of a crime of a nature that demonstrates the parent's, guardian's, or custodian's unfitness to be a suitable caretaker of the child;
- H. Whose parent, legal guardian, or custodian had an opportunity to prevent abuse or avoid neglect of the child and failed to do so;
- I. Whose custodial parent has had his or her parental rights to a sibling of the child terminated; or
- J. Who is found under conditions that would support grounds for involuntary termination of parental rights found in § 5.1-26 of this chapter.

**CHILD NEGLECT** — Negligent treatment or maltreatment of a child by a person, including a person responsible for the child's welfare, under circumstances which indicate that the child's health or welfare is harmed or threatened. Negligent treatment or maltreatment includes without limitation the failure of the parents, guardian, custodian, or any other person responsible for a child's health or welfare to provide adequate food, clothing, shelter, medical care, education, or supervision necessary for such child's health or welfare.

**CONSERVATOR** — A person, other than parent, guardian, or custodian, who has been authorized by a court of competent jurisdiction to exercise the duty and authority to preserve and maintain the income, assets, and property of a Këwabmogéyoyen (“Protected Child”). ~~court ward.~~

**CONTROLLED SUBSTANCE** — A controlled substance as defined as the Public Acts of Michigan law or by federal law.

**COURT** or GUN LAKE TRIBAL COURT — ~~A court of competent jurisdiction other than~~ Means the Gun Lake Tribal Court.

**CUSTODIAN** — A person, other than a parent or guardian, to whom custody of the child has been given by a court or by a person who has legal custody.

**DOMICILE** — A person's permanent place of residence. The domicile of a child is generally that of the custodial parent, guardian, or custodian. Domicile includes the intent to establish a permanent home or the place where the parent, guardian, or custodian considers his or her permanent home.

**EXTENDED FAMILY** — An adult person who is the child's niece or nephew, first or second cousin, or non-kinship relations recognized by a consensus of immediate family members.

~~**FAMILY WELFARE COMMITTEE** — The Committee appointed by the Tribal Council to protect the best interests of the children of the MBPI and promote stability and security in accordance with Chapter 5.4, Family Welfare Committee.~~

**FATHER** — A man whose paternity of a child has been legally established through one of the following methods:

- A. By being married to the mother when the child was born;
- B. By an affidavit of parentage;
- C. By acknowledging paternity on the child's birth certificate at the hospital; or
- D. By establishment from a court of competent jurisdiction.

FOREIGN COURT – means a court of competent jurisdiction other than the Gun Lake Tribal Court and may refer to either a state or Tribal court from another federally recognized Tribe.

GUARDIAN — A person, other than a parent or custodian, who has been authorized by a court of competent jurisdiction to exercise the duty and authority to provide for the health and welfare of a child.

GUN LAKE PUBLIC SAFETY DEPARTMENT — The tribal police of the ~~MBPI~~Tribes.

GUN LAKE TRIBAL COURT — The Tribal Court of the ~~MBPI~~Tribes, which is a court of general jurisdiction over all causes of action within the territorial jurisdiction of the ~~MBPI~~Tribes except as may be limited by tribal or federal law.

HEALTH AND HUMAN SERVICES DEPARTMENT — The agency of the ~~MBPI~~Tribes that is responsible for providing children with the protective and other social services provided for in this chapter.

IMMEDIATE FAMILY (~~MEMBER~~)— An adult person who is the child's parent or stepparent, excluding a parent or stepparent from whose custody the child was removed, aunt or uncle, brother or sister, brother-in-law or sister-in-law, or grandparent.

INDIAN CHILD WELFARE ACT (ICWA) — The Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq., as amended.

“KĒWABMOGÉYOYEN” (pronounced “koh-wahb-moh-geh-yo-vin”) or “PROTECTED CHILD” — A child who has been adjudicated to be a child in need of protection, or a child for whom the Gun Lake Tribal Court has appointed a guardian or a conservator, and over whom the Gun Lake Tribal Court has asserted jurisdiction. A child in need of protection and any child for whom the Gun Lake Tribal Court has appointed a guardian or a conservator is a temporary protected child of the Gun Lake Tribal Court until the time the case is dismissed, and jurisdiction terminates. In cases where parental rights are terminated, except as may otherwise be provided by Gun Lake Tribal Court order, the child is a permanent protected child of the Gun Lake Tribal Court until the child is lawfully adopted or emancipated.

LEAST RESTRICTIVE ALTERNATIVE — The placement option that is the least restrictive on the liberty interests of the child and immediate family, and achieves the objectives of this chapter.

~~MBPI — The Match E Be Nash She Wish Band of Pottawatomi Indians.~~

~~MBPI CHILD — Any child who is an enrolled citizen of the MBPI or a child who is eligible to be a member of the MBPI.~~

~~MBPI TRUST LANDS — All lands held in federal trust by the United States of America for the MBPI.~~

MICHIGAN INDIAN FAMILY PRESERVATION ACT (MIFPA) — The Michigan Indian Family Preservation Act of 2013, MCL 712B.1 through 712B.41.

MOTHER — The biological mother of a child or, in the cases of surrogate motherhood or other nontraditional circumstances involving the creation or gestation of an embryo, the adult female considered to be the mother of a child based on the applicable ~~law~~ law of the place where the child was born.

MULTIDISCIPLINARY TEAM or MDT – A specialized team established to assist in the investigation and prosecution of child abuse and neglect cases.

PARENT — The biological mother or father of a child or a child's adoptive parent, but not including a person whose parental rights have been terminated or an unwed father whose paternity has not been lawfully established.

PARENTAL RIGHTS — The legal rights to exercise control over a child within the limits of the law and to fulfill the responsibilities, duties and obligations of a parent to a child, including, without limitation, providing the child with:

- A. Care, custody, and protection;
- B. Advice and counsel;
- C. Discipline;
- D. Education;
- E. Health care;
- F. Religious, spiritual or traditional education and training;
- G. Fiduciary control over a child's earnings and assets; and
- H. Direction and control over the child's activities.

**PRESENTING OFFICER** — Any attorney who is authorized to represent the MBPITribe in matters under this chapter, including child protection matters in state court, Tribal Court or transferred to the Gun Lake Tribal Court pursuant to the Indian Child Welfare Act, Michigan Indian Family Preservation Act, or other law.

**PROTECTIVE CUSTODY** — The status of being held under authority of law to prevent harm to the individual being held in protective custody.

**PUTATIVE FATHER** — A man who is the alleged or reputed father of a child born out of wedlock whose paternity has not been legally established.

**QUALIFIED EXPERT WITNESS** — A person, in child custody proceedings under this chapter, who possesses the following characteristics:

- A. Is a citizen of the MBPITribe or, if the child is not a citizen of the MBPITribe, a member of the child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child-rearing practices; or
- B. Has substantial experience in the delivery of child and family services to American Indians and extensive knowledge of prevailing social and cultural standards in child-rearing practices within the child's tribe; or
- C. Is a professional person with extensive education and experience in the area that testimony and opinion will be offered by such person.

**REASONABLE EFFORTS** — The exercise of due diligence by the responsible social services agency to use culturally appropriate and available services to meet the needs of the child and the child's family in order to prevent removal of the child from the child's family or, upon removal, use culturally appropriate and available services to eliminate the need for removal and reunite the family.

**SERVICE AREA** — The territory comprised of Allegan County, Barry County, Kalamazoo County, Kent County, and Ottawa County, Michigan.

**TRIBAL CHILD** — Any child who is an enrolled citizen of the Tribe or a child who is eligible to be a member of the Tribe.

**TRIBAL COUNCIL** — The elected governing body of the MBPITribe with authority to exercise legislative and executive powers pursuant to the MBPITribe's Constitution.

**TRIBAL COURT** — A Tribal Court of competent jurisdiction other than the Gun Lake Tribal Court.

**TRIBAL HOLIDAY** — Any day of the year established as an official holiday by the Tribal Council thereby resulting in the closure of the MBPITribal government offices, including the Gun Lake Tribal Court, for the duration of a normal business day.



TRIBAL TRUST LANDS — All lands held in federal trust by the United States of America for the Tribe.

TRIBE — The MBPI Match-E-Be-Nash-She Wish Band of Pottawatomi, a U.S. federally recognized Tribal government.-

~~WARD — A child who has been adjudicated to be a child in need of protection, or a child for whom the Gun Lake Tribal Court has appointed a guardian or a conservator, and over whom the Gun Lake Tribal Court has asserted jurisdiction. A child in need of protection and any child for whom the Gun Lake Tribal Court has appointed a guardian or a conservator is a temporary ward of the Gun Lake Tribal Court until the time the case is dismissed and jurisdiction terminates. In cases where parental rights are terminated, except as may otherwise be provided by Gun Lake Tribal Court order, the child is a permanent ward of the Gun Lake Tribal Court until the child is lawfully adopted or emancipated.~~

## ARTICLE II Children in Need of Protection

### § 5.1-4. Jurisdiction of Gun Lake Tribal Court.

- A. The Gun Lake Tribal Court will have jurisdiction in all child-in-need-of-protection matters arising under the provisions of this chapter and any child-protection proceeding transferred to the Gun Lake Tribal Court pursuant to the Indian Child Welfare Act, tribal law, the Michigan Indian Family Preservation Act, or other applicable law.
- B. The Gun Lake Tribal Court will have jurisdiction over the following persons:
- (1) Any child residing within MBPI Tribal trust lands and his or her parents, guardians, custodians, and members of the child's household;
  - (2) Any person within MBPI Tribal Trust Lands who is alleged to have caused any child residing within such lands to become a child in need of protection;
  - (3) Any MBPI Tribal child and his or her parents, guardians, custodians, and members of the child's household in any matter transferred to the Gun Lake Tribal Court; and
  - (4) Any enrolled Citizen of the Tribe under the age of eighteen (18) years;
  - (5) Persons under the age of eighteen (18) who are eligible for enrollment in the Tribe;
  - ~~(3)(6) Any child who is a member of a federally recognized American Indian Tribe, Alaska Native, or a member of a regional corporation defined under 43 U.S.C. § 1606 who is under the age of eighteen and is a member of a Citizen's household;~~
  - ~~(4) Any person residing within MBPI trust lands who is pregnant and abusing alcohol and controlled substances.~~
- C. Once the Gun Lake Tribal Court asserts jurisdiction over a person, the ~~Gun Lake Tribal~~ Court may retain jurisdiction over that person even if the person leaves the physical boundaries of the MBPI Tribe's trust lands or Service Area.
- D. Jurisdiction is continuing and exclusive unless the Gun Lake Tribal Court enters an order terminating its jurisdiction or transferring jurisdiction to another foreign court.
- E. The Court, pursuant to the discretion of the Gun Lake Tribe Health and Human Services Department, shall continue jurisdiction until the date on which the child is granted a high school diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student and is reasonably expected to complete the program before reaching nineteen (19) years of age.

F. The Court, pursuant to the discretion of the Gun Lake Tribe Health and Human Services Department, shall continue jurisdiction until the date on which the child is granted a high school diploma or the date on which the child reaches 21 years of age, whichever occurs first, if the child is a full-time student and if an individualized education program is in effect for the child. At any time after the child reaches eighteen (18) years of age, the child, or the child's guardian on behalf of the child, may request the Court in writing to terminate the jurisdiction of the Court and on receipt of such a request, the Court, without a hearing, shall terminate jurisdiction.

#### § 5.1-5. Officers of Gun Lake Tribal Court.

- A. Presenting Officer. The Tribe shall appoint and/or designate a licensed attorney to serve as the Tribe's Presenting Officer. The Presenting Officer is authorized to exercise the following duties on behalf of the Tribe: The Presenting Officer:
- (1) ~~Is authorized to~~ represent the ~~MBPTribe~~ in proceedings arising under this chapter and proceedings in ~~T~~tribal courts, and state courts under the Indian Child Welfare Act (ICWA), or the Michigan Indian Family Preservation Act (MIFPA) and advocate the ~~MBPTribe's~~ interests, which includes ensuring compliance with the MIFPA and the ICWA in state court;
  - (2) May provide legal counsel to the ~~Family Welfare CommitteeMDT~~ and the Health and Human Services Department with respect to matters under this chapter, including recommendations on transfer of jurisdiction;
  - (3) May make recommendations to the Health and Human Services Department, the ~~Family Welfare CommitteeMDT~~, and the Tribal Council regarding amendments to this chapter; and
  - (4) May pursue appeals of state court orders that negatively affect the interest of the ~~MBPTribe~~.
- B. Counsel for each parent, guardian, or custodian. The Gun Lake Tribal Court has the discretion to appoint an attorney to represent each parent, guardian, or custodian at any stage of proceedings. The assistance of counsel will be paid for by the ~~MBPTribe~~ if the parent, guardian or custodian is indigent, according to criteria established by the Gun Lake Tribal Court.
- C. Guardian ad litem.
- (1) Appointment. At any stage of a proceeding conducted under this chapter, but at least thirty (30) days before an adjudication or disposition hearing, as applicable, the Gun Lake Tribal Court ~~may, in its discretion, appoint~~shall appoint an attorney guardian ad litem or lay guardian ad litem for the child. If the Court decides to use a lay person to serve as a guardian ad litem, the Court shall require that the lay person demonstrate the requisite training and knowledge specific to this Act and line of work necessary to perform the duties below. A lay person may satisfy these requirements through completion of training at the Gun Lake Tribal Court, or other Guardian Ad Litem training program offered through either a state court system or other tribal guardian ad litem program. All persons who wish to serve as a Guardian Ad Litem in the Gun Lake Tribal Court shall complete an FBI Fingerprint Background Check and any further requirements deemed necessary by the Gun Lake Tribal Court.
  - (2) Duties of the guardian ad litem. ~~When the Gun Lake Tribal Court, in its discretion, has appointed an attorney guardian ad litem, that person will perform the following duties: Upon appointment by the Gun Lake Tribal Court, the guardian ad litem will perform the following duties:~~



- (a) Appear at all hearings to competently represent the best interests of the child;
- (b) Make an independent evaluation, as necessary, to ascertain the facts and circumstances underlying any allegation that the child is in need of protection;
- (c) Ascertain the interests of the child, taking into consideration the child's wishes according to the competence and maturity of the child;
- (d) If a conflict exists between what the attorney guardian ad litem believes to be in the child's best interest and what the child's wishes are, the attorney guardian ad litem may request the Gun Lake Tribal Court appoint the child a separate attorney to advocate for the child's wishes;
- (e) Provide written reports of findings and recommendations as requested by the Gun Lake Tribal Court;
- (f) ~~Urge~~ Recommend that specific and clear orders are entered for evaluation, assessment, services and treatment for the child, parents, guardians, custodians, and members of the child's household when appropriate;
- (g) In consultation with the Health and Human Services Department, monitor the implementation of case plans and disposition orders to determine whether services ordered by the Gun Lake Tribal Court are actually provided, are provided in a timely manner, and are accomplishing their desired goal;
- (h) In coordination with the Health and Human Services Department, inform the Gun Lake Tribal Court if the services are not being made available to the child, parents, guardians, custodians, and members of the child's household, whether there is compliance with the service plan or whether such services are not achieving their purposes;
- (i) Coordinate with the Health and Human Services Department and other service providers in advocating for the interests of the child in mental health, educational, and other community systems when related to the circumstances causing the child to come within the jurisdiction of the Gun Lake Tribal Court; and
- (j) Prior to all court hearings, the ~~attorney~~ guardian ad litem will meet with the child in the home, foster home, or at a location that is familiar to the child in order to assess the child's well-being and progress.

#### § 5.1-6. Health and Human Services Department.

The Health and Human Services Department will have the following authority for purposes of this chapter:

- A. Cooperation and grants. The Health and Human Services Department is authorized to cooperate fully with any federal, state, tribal, public or private agency in order to participate in any foster care, shelter care, treatment or training program(s) and to receive grants-in-aid to carry out the purpose of this Chapter;
- B. Social services. The Health and Human Services Department is authorized to utilize such human services as may be furnished by any tribal, federal or state agency provided that it is economically administered without unnecessary duplication and expense and meets the standards stated in this chapter; and
- C. Contracts. The Health and Human Services Department may assist, with the approval of Tribal Council, in establishing agreements and contracts with public and private entities to delegate investigative and other responsibilities, when necessary, for the care and placement of children who are under the jurisdiction of the wards of the Gun Lake Tribal Court, and to achieve other purposes of this chapter and the ~~MBPT~~ Tribe regarding child welfare.

- D. Central registry of reports. The Health and Human Services Department will maintain a central registry of reports, investigations and evaluations made under this chapter. The registry will contain all information regarding suspected child abuse or neglect of any child under ~~the MBPI~~Tribe's jurisdiction. Such information will be preserved in the central registry until the child reaches 18 years of age, unless the Gun Lake Tribal Court orders the child's records to be preserved for a longer period of time to assist with the protection of other siblings or for other purposes. Information maintained in the central registry will be confidential and may be disclosed only to tribal, state, and federal agencies who demonstrate a need for such information for child protection and child welfare purposes. The decision regarding what information may be disclosed and to whom it may be disclosed will be subject to the sole determination of the Director of the Health and Human Services Department absent a lawful order from ~~the Court or a court~~foreign court of competent jurisdiction. A request for the release of information must be submitted in writing, and such request and its approval will be made a part of the child's file.

### § 5.1-7. Protective services.

The Health and Human Services Department will provide protective services in accordance with the requirements set forth below. Protective services will include:

- A. Reviewing information regarding a child who may be a child in need of protection;
- B. Promptly initiating, or causing to be initiated, an investigation upon receipt of information regarding a child in need of protection within the jurisdiction of the Tribe, to determine the nature, extent, and cause of any condition which is contrary to the child's welfare and the name, age, and condition of other children in the home;
- C. Seeking the assistance of, and cooperating with, tribal, state or other law enforcement officials upon having probable cause to believe that a child has been or is being subjected to abuse or neglect and law enforcement intervention is necessary;
- D. Maintaining a written record of the investigation that includes, at a minimum, specific facts, dates, witnesses, and whether there is probable cause to believe that a child is a child in need of protection;
- E. Assisting the Gun Lake Public Safety Department and other law enforcement authorities in taking a child into temporary custody if necessary pursuant to § 5.1-18;
- F. Assessing the risk to other children in the home;
- G. Offering or recommending to the immediate family of any child found to be a child in need of protection appropriate human services available through tribal, state, federal, or local human services programs;
- H. Within 30 days of receiving information of a potential child in need of protection, submitting a written report of the investigation with recommendations to the Director of the Health and Human Services Department; and
- I. ~~Informing the Director of the Health and Human Services Department of any information received that provides probable cause to believe that a woman residing within MBPI trust land~~ Documenting any information received that may support a finding that there is a woman who is pregnant and is abusing alcohol or is using a controlled substance for a nonmedical purpose during pregnancy and, ~~in consultation with the Director of the Health and Human Services Department,~~ arranging or recommending to such person an appropriate assessment and offer of available services. Services offered may include, but are not limited to, a referral for chemical dependency assessment, a referral for chemical dependency treatment, if recommended, and a referral for prenatal care.

### § 5.1-8. Child welfare services.

The Health and Human Services Department will provide child welfare services within the authority and jurisdiction of the MBPTribe and this chapter. When any child welfare services required to be performed by the Health and Human Services Department have been lawfully assigned to a state or state-authorized agency, the Health and Human Services Department will monitor those services for compliance with this chapter. Child welfare services will include:

- A. Ascertaining the interests of the child, taking into consideration the child's wishes and cultural/religious preferences according to the competence and maturity of the child;
- B. Providing a written report of findings and recommendations as required by the Gun Lake Tribal Court;
- C. Informing the Gun Lake Tribal Court if the services are not being made available to the child, parents, guardians, custodians, and members of the child's household;
- D. Informing the Gun Lake Tribal Court if the child's parents, guardians, custodians, and members of the child's household are failing to take advantage of such services or if such services are not achieving their purpose; and
- E. Serving as liaison and advocate to agencies of the tribal or state governments on behalf of the child, parents, guardians, custodians, and members of the child's household and facilitate access to available services.

**§ 5.1-9. Reporting and investigating child abuse or neglect.**

- A. Discretionary reporters. With regard to cases arising on or within MBPTribal trust lands or in the Service Area, any person who has a reasonable basis to believe that a child is a child in need of protection may immediately make a report to an intake designated by Director of the Health and Human Services Department, or his/her designee.
- B. Persons specifically required to report. The following persons, upon having a reasonable basis to suspect that a child may be a child in need of protection, are required to immediately report child abuse and neglect situations a designated intake as determined by the Health and Human Services Department to the Director of the Health and Human Services Department, or his/her designee:
  - (1) Physicians, nurses, dentists, optometrists, community health representatives, counselors and therapists, and other medical or mental health professionals;
  - (2) Any tribal staff, elected tribal officials, contractual tribal officials, and any members of tribal committees and tribal advisory boards;
  - (3) School and education administrators, schoolteachers, and other school personnel and officials;
  - (4) Social workers and other social-agency personnel;
  - (5) Child day-care center workers, residential child-care workers, and other child-care staff;
  - (6) Foster parents and guardians;
  - (7) Volunteers involved in tribal services or programs involving children;
  - (8) Volunteers working with families;
  - (9) Law enforcement officers and officials; and
  - (10) Members of the Family Welfare CommitteeMDT and members of the Coordinating Enforcement Team.

- C. A person mandated to report under Subsection B who knows or has reason to suspect that a woman residing within ~~MBPT~~Tribal trust lands or the Service Area is pregnant and is abusing alcohol or is using a controlled substance for a nonmedical purpose during pregnancy must immediately report the information to the intake designated by Director of the Health and Human Services Department.
- D. A written report of child abuse or neglect prepared pursuant to Subsection B must provide the following information, if available:
- (1) Names and addresses of the child, parents, guardian, or custodian of such persons;
  - (2) Tribal affiliation and enrollment numbers of the child, parents, guardian, or custodian;
  - (3) The child's birth date and gender;
  - (4) The grade and school in which the child is currently enrolled;
  - (5) All facts and circumstances regarding the suspected abuse or neglect;
  - (6) Previous history of abuse or neglect of the child and siblings;
  - (7) The name, age, address of the person(s) alleged to have abused or neglected the child, and all information which will assist to identify the person(s) involved;
  - (8) The name and address of the person making the report; and
  - (9) All information which will assist in the identification or location of victims(s) and person(s) involved.
- E. Initiation of an investigation. Upon receipt of a report alleging that a child is a child in need of protection, the agency that received the report will initiate an investigation of the allegations and must take immediate, appropriate steps to secure the safety and well-being of the child or children involved. Upon completion of the investigation, the agency will prepare a final written report.
- F. Waiver of parental consent to examinations and interviews. If the Health and Human Services Department or the Gun Lake Public Safety Department has probable cause to believe a child is a child in need of protection, photographs, X-rays, medical examinations, psychological examinations, and interviews of the child will be allowed without the consent of the parent, guardian, or custodian. Such will be conducted under circumstances and with safeguards designed to minimize additional trauma to the child.
- G. Abrogation of privilege. Privileged communications recognized elsewhere in the law, other than between attorney and client, are abrogated for purposes of this chapter.
- H. Identity of reporters. The identity of a person making a report pursuant to this section will be kept confidential by all personnel of the Health and Human Services Department and the Gun Lake Public Safety Department and is subject to disclosure only with the consent of that person or by order of ~~a~~ the Court or a foreign of competent jurisdiction. All persons or agencies reporting, in good faith, known or suspected instances of abuse or neglect will be immune from civil liability and criminal prosecution.

**§ 5.1-10. ~~Coordinating Enforcement~~Multidisciplinary Team (MDT).**

- A. The Multidisciplinary Team (MDT) is composed of members who have professional expertise necessary to identify and plan the management of child abuse and neglect cases. Key members of the MDT include the Presenting Officer, Social Services Manager, Case Managers, the Director of Health and Human Services, and Qualified Expert Witness.

B. In cases involving allegations that may lead to criminal prosecution, the MDT will be expanded to include, without limitation, United States Attorney, FBI, Tribal Police, CIT, Victim Advocate(s), medical professional(s), and behavioral health clinician(s). The expanded MDT will collaborate on the jurisdictional issues and coordinate available serv

C. In cases involving allegations that may lead to criminal prosecutions, the Presenting Officer, the Director of the Health and Human Services Department and the Director of the Gun Lake Public Safety Department may communicate with the prosecutor, if appropriate and under proper protocol, on whether a case should be referred for prosecution and to which court, i.e., the Gun Lake Tribal Court or federal court. The Director of the Health and Human Services Department and the Director of the Gun Lake Public Safety Department may, at their discretion, include other tribal staff and representatives, and representatives from federal and state law enforcement and human services agencies on the Coordinating Enforcement Team. Members of the MDT will maintain confidentiality as to all information acquired through or for a MDT meeting. -

D. MDT will meet on a regular basis (i.e. monthly/quarterly) and will also convene on a case-by-case basis.

### § 5.1-11. General proceedings.

- A. Nature of child protection proceeding. Child protection and child welfare proceedings in the Gun Lake Tribal Court are civil proceedings arising under this chapter pursuant to the jurisdiction of the Tribe to adjudicate matters pertaining to the health, welfare, and safety of the ~~Tribe and its members. Child protection and child welfare proceedings are intended to further the best interests of the~~ children who are the subject of the proceedings, the best interests of their immediate family and extended family, and the best interests of the Tribe or other Indian tribes with whom such children are affiliated.
- B. Closed proceedings. All proceedings in the Gun Lake Tribal Court arising under this chapter or otherwise concerning matters of the child welfare or child protection will be considered closed to the public. Access to such proceedings will be limited to the following persons or entities:
- (1) Parties to the proceeding recognized as such by the Gun Lake Tribal Court, including the child who is the subject of the proceeding, the child's parents, guardian, or custodian, and the Presenting Officer;
  - (2) Attorneys for the parties, including any attorney guardian ad litem appointed by the Gun Lake Tribal Court;
  - (3) The Director and any staff of the Health and Human Services Department or any state agency or state-authorized agency who is actively involved in the matter, including child welfare workers and child protection workers;
  - (4) Gun Lake public safety officers and state or local law enforcement officers if the matter involves or may involve criminal violations;
  - (5) Fact witnesses and expert witnesses called by the Gun Lake Tribal Court or by a party under the authority of the Gun Lake Tribal Court to testify in the proceeding;
  - (6) The Gun Lake Tribal Court officers and personnel; and
  - (7) Any other person or entity authorized by the Gun Lake Tribal Court to be present at the proceeding.
- C. Rules of evidence. The Match-E-Be-Nash-She-Wis Band of Pottawatomi Court Rules of Evidence, which enables the application of Michigan's Court Rules of Evidence upon motion or initiative by the presiding judge, will be persuasive authority in these proceedings, but not controlling. The



~~formal rules of evidence enacted into tribal law will not apply at these proceedings.~~ The Gun Lake Tribal Court may establish rules of evidence applicable to proceedings under this chapter, provided that such rules are not in conflict with this chapter or with tribal law. All relevant and material evidence which is reliable and trustworthy may be admitted at the trial and may be relied upon by the Gun Lake Tribal Court to the extent of its probative value.

D. Rights of parties.

- (1) Witness and reports. The parties will be afforded an opportunity to call witnesses and to cross-examine witnesses, examine and challenge the information and conclusions in any written reports received by the Gun Lake Tribal Court, and examine or cross-examine the authors of such reports and any individuals who provided information contained in the reports.
- (2) Child witnesses. If the Gun Lake Tribal Court determines that it is in the best interests of the child and does not violate the rights of a party, the Gun Lake Tribal Court may allow a child to testify by closed circuit television, videotaped deposition, or other suitable method outside the courtroom and the presence of any parties subject to allegations of abuse or neglect. The decision by the Gun Lake Tribal Court to allow a child to testify in a proceeding through the methods described in this subsection shall be made by written order, which will set forth findings of fact and all reasons supporting the decision.
- (3) ~~Speaker telephones~~ Participation by phone or video. The Gun Lake Tribal Court, in its discretion, may allow telephone and video conferencing or other electronic communication devices to allow parties unable to appear the ability to participate at a proceeding, provided that the use of such devices does not deprive another party of any rights under Tribal law.

E. Burden of proof. Unless this chapter expressly makes a different standard of proof applicable to a particular proceeding, the party asserting allegations in a proceeding under this chapter has the burden of proving such allegations by preponderance of the evidence.

F. Recognition and enforcement of foreign court acts. The Gun Lake Tribal Court will recognize and enforce the judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts of other foreign courts as provided in Chapter 4.4, Recognition and Enforcement of Foreign Court Judgments, and the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq.

G. Visitation by grandparents and other family members.

- (1) Subject to all other requirements of this chapter, a grandparent or other member of the immediate family or the extended family of a child who is a ~~Gun Lake Tribal Court ward~~ protected child will be entitled to reasonable visitation with the child during any period that the child is not in the custody of a parent unless the Gun Lake Tribal Court finds that such visitation is not in the best interest of the child or that such visitation is likely to interfere with a case service plan or a disposition order or other court order regarding the child.
- (2) Any person described in Subsection G(1) who seeks an order granting visitation rights with a child who is a ~~Gun Lake Tribal Court ward~~ protected child will initiate such request by filing a petition for visitation accompanied by an affidavit of all supporting facts. The Gun Lake Tribal Court may consolidate the proceeding on a petition for visitation with any pending proceeding involving the child. Absent a Gun Lake Tribal Court Order to the contrary, reasonable supervision or unsupervised visitation with the child by a person described in Subsection G(1) may be allowed at the discretion of the Health and Human Services Department or any state or state-authorized agency involved in the proceeding, provided that any attorney guardian ad litem appointed for



the child concurs in the visitation.

- (3) The termination of parental rights will not affect the visitation rights of a person described in Subsection G(1) unless the Gun Lake Tribal Court finds that such visitation is not in the best interest of the child or that such visitation would interfere with the goals of permanency planning for the child.
- (4) Visitation may be supervised or unsupervised and, where appropriate and feasible, may take place in the home of the person allowed visitation or granted visitation rights. A person allowed visitation or granted visitation rights may be required by the authorizing agency or the Gun Lake Tribal Court to pay transportation and other incidental expenses for any visitation that takes place in such person's home.
- (5) Any attempt by a person who has been allowed visitation or granted visitation rights to facilitate a meeting between the child and any other person in knowing violation of a Gun Lake Tribal Court Order will result in the automatic termination of such person's future visitation rights.

**§ 5.1-12. Service of summonses, subpoenas, notices, and other documents.**

A. Summons.

- (1) Content of summons. Except as provided otherwise in this chapter or by an order of the Gun Lake Tribal Court, every summons must:
  - (a) Identify the nature of proceeding;
  - (b) Direct the parents, guardians, or custodian to appear or to produce records at the proceeding;
  - (c) Notify the parents, guardians, or custodian of their rights and provide a prominent notice if the proceeding could result in the termination of their parental rights;
  - (d) Set forth the time, date, and place of the hearing; and
  - (e) Have attached to it a copy of the petition, report, notice of hearing, and any other documents filed or to be filed with the Gun Lake Tribal Court along with the Summons in the proceeding.
- (2) Time for service of summons. Unless a shorter period of time is required under this chapter, the summons must be served upon the child's parent, guardian, or custodian:
  - (a) At least 14 days prior to the date of any hearing on a petition for child protection, except for a preliminary hearing, termination of parental rights hearing, or adoption hearing; and
  - (b) At least seven days prior to all other hearings.
- (3) Manner of serving summons.
  - (a) Personal service. Except as provided below or elsewhere in this chapter, a summons will be served personally on the named party.
  - (b) Service by certified mail. If personal service of the summons is impractical or cannot be achieved within the required time, the Gun Lake Tribal Court may authorize service by certified mail addressed to the last known address of the summoned party.
  - (c) Substituted service. The Gun Lake Tribal Court may authorize any manner of substituted service, including publication, if service cannot be made because the whereabouts of the

person to be summoned has not been determined after reasonable effort has been made.

B. Subpoenas.

- (1) Content of subpoenas. Except as provided elsewhere in this chapter, every subpoena must:
  - (a) Identify the nature of proceeding;
  - (b) Direct the witness, parents, guardians, or custodian to appear or to produce records at the proceeding; and
  - (c) Set forth the time, date, and place of the hearing.
- (2) Time for service of subpoenas. Unless a shorter period of time is required under this chapter or by an order of the Gun Lake Tribal Court, the subpoena must be served upon the named person at least seven days prior to the hearing.
- (3) Manner of serving subpoena. A subpoena must be served as follows:
  - (a) Personal service. Except as provided below or elsewhere in this chapter, a subpoena must be served personally on the subpoenaed person.
  - (b) Service by certified mail. If personal service of the subpoena is impractical or cannot be achieved within the required time, the Gun Lake Tribal Court may authorize service by certified mail addressed to the last known address of the subpoenaed person only.

C. Notice of hearing.

- (1) Time for service of notice. Unless a shorter period is required under this chapter, a notice of any hearing held pursuant to this chapter must be served on the parents, guardians, or custodian, and on all other interested parties at least 14 days prior to the date of the hearing.
- (2) Persons entitled to notice. The following persons or entities must be served with the petition and notice of any hearing prior to the date of the hearing:
  - (a) The parent(s) or the attorney for the parent(s), if any;
  - (b) The attorney guardian ad litem for the child, if any;
  - (c) The legal guardian or custodian of the child, other than the parent, if any;
  - (d) The Department of Health and Human Services and any state agency or state-authorized agency involved in the case;
  - (e) The court of the child's tribe if different from [the MBPTTribes](#); and
  - (f) Any other person or entity the Gun Lake Tribal Court may direct to be notified.
- (3) Manner of serving notice.
  - (a) A notice of hearing regarding the initial hearing must be served as follows:
    - [1] Personal service. Except as provided below or elsewhere in this chapter, a notice of hearing will be served personally on the named person;
    - [2] Service by mail. If personal service of the notice of hearing is impractical or cannot be achieved within the required time, the Gun Lake Tribal Court may authorize service by certified mail addressed to the last known address of the named party only.
  - (b) Except as provided otherwise in this chapter or by the Gun Lake Tribal Court, a notice of

hearing regarding any hearing following the initial hearing in a proceeding under this chapter may be served either by personal service or by first class mail, postage prepaid.

- D. Other documents. Except as provided otherwise in this chapter or by an order of the Gun Lake Tribal Court, any other document, other than those specifically identified in this section, may be served either by personal service or by first class mail, postage prepaid, at least three days prior to the date of any hearing at which such document may be considered. (i.e., the guardian ad litem report).
- E. Waiver of notice or service. Any person or entity entitled to service of a summons, subpoena, notice of hearing, or other Gun Lake Tribal Court document may waive the time requirements for service of process, provided that the waiver is in writing or is made orally on the record in the Gun Lake Tribal Court.
- F. Time.
- (1) Computation of time. In computing any period of time under this chapter, the day of the act, event, or default from which the designated period of time begins to run will not be included. The last day of the period will be included, unless it is a Saturday, Sunday, or a tribal holiday. If weather conditions make the Gun Lake Tribal Court inaccessible on a day in which the act of a filing is to be done, the period of time runs until the end of the next day that ~~is not a Saturday, Sunday, or tribal holiday~~ the Gun Lake Tribal Court is open for business. When the period of time prescribed or allowed is less than 14 days, intermediate Saturdays, Sundays, and tribal holidays will be excluded in the computation.
  - (2) Extension of deadline. When an act is required or allowed to be done at or within a specified time by this chapter, the Gun Lake Tribal Court may, in its discretion, order an extension of the deadline for good cause if a motion is made before the expiration of the specified period.
  - (3) Motions. A written motion and notice of hearing on the motion will be served no later than five days before the time specified for the hearing, unless a different period is prescribed in this chapter or by an order of the Gun Lake Tribal Court or for good cause shown by the moving party.
  - ~~(4) Service by mail. Three days will be added to a prescribed time period whenever a party has the right or is required to do some act within a prescribed time period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail.~~

### § 5.1-13. Putative fathers.

If at the first appearance of the parties in any child protection proceeding under this chapter no father has appeared, the Tribal Court will proceed as follows:

- A. Evidence of putative father. The Gun Lake Tribal Court will inquire whether a person has been identified as the child's father. If there is probable cause to believe that an identifiable person is the father and such person has not been served, the Gun Lake Tribal Court will direct that notice be served on that person in the manner provided in this section. In addition to all other requirements in this section regarding notice of the proceeding and summons, the notice to the putative father must include a statement that failure to attend the hearing will constitute a denial of interest in the child, a waiver of notice for all subsequent hearings, and could result in termination of any alleged parental

rights. If the putative father appears before the Gun Lake Tribal Court at the time and place specified, the Gun Lake Tribal Court will proceed to determine paternity under tribal law.

- B. No evidence of putative father. After inquiry, if there is no evidence of a putative father, the Gun Lake Tribal Court will direct that notice of hearing be published in a manner most likely to notify a person who may be the father of the child.
- C. Waiver of rights. The Gun Lake Tribal Court may find that the putative father waives all rights to notice, including the right to notice of termination of parental rights, and the right to legal counsel if:
  - (1) He fails to appear after proper notice; or
  - (2) He appears but fails to establish paternity within the time set by the Gun Lake Tribal Court.

#### § 5.1-14. Placement of children.

- A. Active ~~and reasonable~~ efforts required. Prior to removal of a child from a home, except when an emergency exists, the Health and Human Services Department will make active and reasonable efforts to provide remedial services and rehabilitative programs, designed to prevent the breakup of the family, to the children, parents, guardians, custodians, and members of the child's household.
- B. Restrictions. A child alleged to be a child in need of protection will not be placed in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile offenders.
- C. Placement preferences. In placing a removed child, every effort will be made to place the child within reasonable proximity to his/her home and in the least restrictive setting which most approximates a family, and in which any special needs, if any, are best met.
  - (1) Preference will be given in the listed order, in the absence of good cause to the contrary, to the following placements. Each placement of a removed child will require documentation that diligent efforts have been made to place the child in accordance with the following preferences and priorities:
    - (a) The home of a parent or stepparent, excluding an unwed father whose paternity has not been lawfully established;
    - (b) The home of an adult member of the child's immediate family, excluding those persons described in Subsection C(1)(a);
    - (c) The home of an adult member of the child's extended family;
    - (d) A tribal-licensed foster home;
    - (e) A facility operated by a licensed Indian Child Welfare Services agency; or
    - (f) Any other suitable placement that meets the needs of care for the child(ren). ~~which meets the standards for shelter care facilities established by tribal law.~~
  - (2) Subject to the preferences stated in Subsection C(1), priority will be given in the listed order, to placements in homes of the following people:
    - (a) An enrolled ~~Citizenmember~~ of the ~~MBPITribe~~;
    - (b) An enrolled member of another Pottawatomi Tribe, an Ottawa Tribe, or a Chippewa Tribe;
    - (c) An enrolled member of any other Indian tribe, band, or group; and

- (d) The home of any other person that meets the needs of care for the child(ren).
- (3) In applying the preferences stated in Subsection C, consideration will not be given to the home of a person from whose custody the child was removed, whose parental rights have been terminated, who is a subject of the allegations or investigation concerning the abuse or neglect of the child, or who resided for any period of time in the child's home during the time that the child abuse or child neglect is believed to have occurred.
- D. Good cause to not follow placement preferences.
- (1) Definition of good cause. As used in Subsection C and in 25 U.S.C. § 1915 for proceedings under the Indian Child Welfare Act, the term "good cause" requires a judicial determination based on one or more of the following considerations:
- (a) A request to deviate that comes from the biological parents or the child, provided he or she is of sufficient age and maturity;
- (b) Extraordinary physical or emotional needs of the child as established by qualified expert testimony; or
- (c) The unavailability of a suitable family after a diligent search for a family that meets the placement preferences.
- (2) Burden of establishing good cause to the contrary. The burden of establishing the existence of good cause not to follow the preferences stated in Subsection C will be on the party requesting urging that the Court determine not to follow placement preferences-not be followed.
- E. Licensed homes or facilities. A child removed from their home will, to the greatest extent possible, only be placed in a home or facility that is licensed to provide foster care services except when a temporary placement is made on an emergency basis with a member of the child's immediate or extended family pending a hearing. In order for a home to be eligible for the placement, the residents of the home will cooperate with inspections and evaluations of the home and residents. These include criminal and other background investigations, and a release of all relevant records from public and private agencies, required by law or regulations.

#### § 5.1-15. Removal orders.

In every child protection proceeding in the Gun Lake Tribal Court, the first Gun Lake Tribal Court order authorizing or directing the removal of a child from his or her home, including an order on an emergency petition confirming a removal without a court order, must conform with the following requirements:

- A. There must be a judicial determination that "it is contrary to the welfare of the child to remain in his or her home";
- B. There must be a judicial determination that active ~~and reasonable~~ efforts were made to prevent the removal of the child from the home or that the lack of such efforts was justified under the circumstances, such as the existence of an imminent threat of harm to the child in the home;
- C. The judicial determinations must be explicit, case specific, and must be supported by findings of fact; and
- D. The order must identify all evidence supporting the determinations, which may be by reference to a Petition, report, or testimony in the record of the proceeding, provided that any testimony used to support a determination must either be clearly identified in the order or a copy of a transcript of the testimony must be attached to the order.

#### § 5.1-16. Transfers of jurisdiction.

- A. Transfer to ~~foreign~~other courts. In any proceeding before the Gun Lake Tribal Court, the Gun Lake Tribal Court may transfer the proceeding to an appropriate state court or another tribal court when the state or the other Indian tribe has a significant interest in the child and the transfer would be in the best interest of the child, provided that the other court first accepts jurisdiction and may lawfully exercise jurisdiction in the entire matter that is the subject of the transfer order.
- B. Transfer from other foreign courts. The Gun Lake Tribal Court may accept or decline, under the procedures set forth in this chapter, transfers of child welfare or child protection proceedings from federal, state, or other tribal courts.

**§ 5.1-17. Intervention in and transfer from state court.**

- A. Receipt of notice. The Director of the Health and Human Services Department, or his/her appointed designee, will be the agent for service of official notice of any state court proceedings involving ~~an~~ MBPI Tribal child that is subject to the Indian Child Welfare Act. Employees of the Health and Human Services Department and other tribal government employees or representatives who become aware that ~~an~~ MBPI Tribal child is involved in a state court proceeding that is subject to the Indian Child Welfare Act must promptly provide the Director of the Health and Human Services Department's appointed designee with a written notice regarding the proceeding.
- B. Distribution of notices. The ~~Director of~~ the Health and Human Services Department, ~~or his/her appointed designee,~~ must provide copies of any notice involving ~~an~~ MBPI Tribal child to the ~~Family Welfare Committee~~MDT and the Presenting Officer within three days of receipt of such notice. In the case of an emergency removal hearing, the Presenting Officer must be contacted immediately.
- C. Certification by the Tribal Enrollment office. The Tribal Enrollment office must promptly, but not exceeding three days from the date of its receipt of a request for enrollment verification, certify in writing to ~~the Director of~~ the Health and Human Services Department, ~~or his/her appointed designee,~~ a determination as to whether the child that is the subject of the request is ~~an~~ MBPI Tribal child. If the child is not an enrolled MBPI-tribal citizen but is eligible for enrollment, the Tribal Enrollment office will also inform ~~the Director of~~ the Health and Human Services Department, or his/her appointed designee, if either of the child's parents are enrolled as MBPI T-tribal citizens.
- D. Intervention. Intervention in all state court proceedings subject to the Indian Child Welfare Act is favored absent good cause to the contrary. The Presenting Officer must, absent good cause to the contrary, file a notice to intervene with the state court as soon as possible, but not more than 14 days after receiving certification by the Tribal Enrollment office that the child is ~~an~~ MBPI Tribal child.
- E. Investigation and report. The ~~Director of the~~ Health and Human Services Department, ~~or his/her designee,~~ must promptly initiate an investigation and file a written report with respect to the factors stated in Subsection F and which relates to the specific circumstances of the case and the needs of the child and parents, custodian, or guardian. The written report must then be filed with the ~~Family Welfare Committee~~MDT and the Presenting Officer. The report must include recommendations regarding the proper course of action for the MBPI Tribe in the proceeding, including whether or not transfer should be sought, and facts and analysis to support the recommendations.
- F. Decision to petition for transfer. Upon review of the report ~~of the Director of~~prepared by the Health and Human Services Department, ~~or his/her appointed designee,~~ the ~~Family Welfare Committee~~MDT will make written recommendations to the Presenting Officer on whether the MBPI Tribe should petition for transfer of the child protection proceeding from the state court to the Gun Lake Tribal Court. The ~~Family Welfare Committee~~MDT must consider the following factors in making its recommendation:
  - (1) The best interests of the child;



- (2) The interests of the immediate family;
  - (3) The interests of the ~~MBPTribe~~;
  - (4) The availability of services from the ~~MBPTribe~~ for the child and his or her immediate family;
  - (5) Prospects for permanent placement for the child; and
  - (6) Wise use of tribal resources.
- G. Request for hearing. If the ~~Director of the Health and Human Services Department and the Family Welfare CommitteeMDT~~ recommends transfer of the case to the Gun Lake Tribal Court from the state court and the Presenting Officer concurs in the recommendation, the Presenting Officer must promptly petition the Gun Lake Tribal Court for a hearing on the recommendation.
- H. Hearing on transfer recommendation. The Gun Lake Tribal Court will conduct a hearing to determine if the Gun Lake Tribal Court should accept transfer prior to the filing of a petition for transfer with the state court. The Gun Lake Tribal Court will consider, in addition to the factors set forth in Subsection F, the following additional factors:
- (1) The recommendations of the ~~Director of the Health and Human Services Department and the Family Welfare CommitteeMDT~~; and
  - (2) The jurisdiction of the Gun Lake Tribal Court over the proceeding.
- I. Gun Lake Tribal Court discretion. The Gun Lake Tribal Court has discretion whether to adopt the recommendations of the ~~Director of the Health and Human Services Department and the Family Welfare CommitteeMDT~~ regarding transfers of a child protection proceeding from a state court. The hearing on whether to accept transfer will be conducted prior to dismissal of the matter in state court.
- J. Petition for transfer. The Presenting Officer must promptly file a petition for transfer of the child protection proceeding with the state court upon receipt of the Gun Lake Tribal Court's decision to accept a transfer of the proceeding to Gun Lake Tribal Court.
- K. Hearings upon transfer. Upon receipt of transfer of jurisdiction from state court, the Gun Lake Tribal Court will hold appropriate hearings in accordance with this chapter.

#### § 5.1-18. Emergency removal for protective custody or emergency medical treatment.

- A. Emergency removal without a Gun Lake Tribal Court order.
- (1) Standard for emergency removal without a Gun Lake Tribal Court Order. Removal of a child for protective custody without a Gun Lake Tribal Court order must not occur unless ~~diligent efforts have first been made to obtain an emergency order from the Gun Lake Tribal Court and only upon a determination that~~ there is probable cause to believe that:
    - (a) The child is a child in need of protection;
    - (b) The child faces an imminent risk of substantial harm if not immediately taken into protective custody;
    - (c) It is contrary to the welfare of the child to remain in his or her home; and
    - (d) No reasonable alternative means of protecting the child from harm other than immediate removal into protective custody are available while a Gun Lake Tribal Court order is sought.
  - (2) Who may remove. It is strongly preferred that such removals be effectuated jointly by the Gun

Lake Public Safety Department and the Health and Human Services Department staff. If the removal cannot be effectuated jointly, the removal can be performed by either the Public Safety Department or the Health and Human Services Department.

- (3) Preparation of removal reports. The Gun Lake Public Safety Department and the Health and Human Services Department must each prepare a report concerning the removal of the child without a Gun Lake Tribal Court order, which will include all relevant facts and conclusions relied upon to support the decision to remove the child within 24 hours of an emergency removal occurring without a Gun Lake Tribal Court order. The removal reports must also include information concerning what problems, if any, were encountered in removing the child, who has custody of the child, and where the child is presently located except to the extent that the Gun Lake Public Safety Department and the Health and Human Services Department confer and determine that there is probable cause to believe that revealing such information to the parents, guardian, custodian, or other interested parties would create an undue risk of harm to the child. If a state social services agency was involved in the removal, the Health and Human Services Department will be responsible for obtaining a report from the state agency in compliance with this provision.
- (4) Preparation and filing of an emergency petition. Within 24 hours of an emergency removal, the Health and Human Services Department must prepare and file with the Gun Lake Tribal Court an emergency petition concerning the child removed. The emergency petition will seek an order confirming the removal and must include all available and applicable information required in a child protection petition, as described in § 5.1-19 of this chapter. The removal reports described in the preceding Subsection A(3) must be filed with the Gun Lake Tribal Court along with the emergency petition. The Presenting Officer will represent and assist the Health and Human Services Department in filing the Petition as needed.
- (5) Hearing on the emergency petition. The Gun Lake Tribal Court will conduct a probable cause hearing on the emergency petition and receive any testimony and other evidence offered in support of the emergency petition.
- (6) Information concerning the location of the child. The Gun Lake Tribal Court may prevent the parents, guardian, custodian, or other interested parties from receiving information, whether in written form or in testimony, concerning the custody or location of the child if the Gun Lake Tribal Court determines, based on the allegations in the emergency petition, that revealing such information would create an undue risk of harm to the child.
- (7) Ex parte hearings. The standards and procedures for conducting ex parte hearings under Subsection B must comply with the requirements stated in Subsection B(6) below.

B. Emergency petitions for protective custody.

- (1) Standard for emergency removal. Except when the standard under Subsection A for emergency removal without a Gun Lake Tribal Court Order has been met, the Health and Human Services Department must prepare or, with the assistance of the Presenting Officer, cause to be prepared an emergency petition seeking a removal order from the Gun Lake Tribal Court to take an MBPTribal child or child that falls under the jurisdiction of the Tribe into protective custody in all cases where there is probable cause to believe that:
  - (a) The child is a child in need of protection;
  - (b) There is a substantial risk of harm to the child if the child is not promptly taken into protective custody; and
  - (c) It is contrary to the welfare of the child to remain in his or her home.

- (2) Contents of an emergency petition. The emergency petition must include all available and applicable information required in a child protection petition.
- (3) Preparation and filing of the emergency petition. The Health and Human Services Department must prepare and file with the Gun Lake Tribal Court an emergency petition for protective custody within 24 hours of the removal. The Presenting Officer will assist the Health and Human Services Department as needed.
- (4) Service of the emergency petition. Every reasonable effort must be made to serve the emergency petition on the parents, guardian, or custodian by personal service promptly after the emergency petition is filed with the Gun Lake Tribal Court and before any hearing. A notice of hearing and summons prepared by the Gun Lake Tribal Court that compels the attendance of the parents, guardian, or custodian at the hearing may be served along with the emergency petition. If no parent, guardian, or custodian can be located, the petition, notice, and summons must be personally served on any adult residing in the same home as the child. If no adult resident of the home is located, the petition, notice, and summons must be left in a prominent place at the home and every reasonable effort must also be made to serve any known adult member of the child's immediate family.
- (5) Hearing on the emergency petition. The Gun Lake Tribal Court will conduct a probable cause hearing on the emergency petition by 3:00 p.m. on the first day after the emergency petition is filed with the Gun Lake Tribal Court. The Gun Lake Tribal Court will evaluate the emergency petition and receive any testimony and other evidence offered in support of the emergency petition. The Gun Lake Tribal Court may prevent the parents, guardian, or custodian and other interested parties, including their legal counsel, from hearing any testimony concerning the temporary placement or custody of the child if the Gun Lake Tribal Court determines that the child may face a risk of harm if such information becomes known to those persons.
- (6) Ex parte hearings. The Gun Lake Tribal Court may only conduct an ex parte hearing following a showing to the satisfaction of the Gun Lake Tribal Court that every reasonable effort was made to obtain service on the parents, guardian, or custodian of the child and any other interested parties not in attendance at the proceeding and an inquiry as to why the attendance of such persons at the hearing could not otherwise be obtained.
- (7) Mandatory removal compliance report by law enforcement. After a child is removed from his or her home by Gun Lake Tribal Court order, the Gun Lake Public Safety Department must advise the Gun Lake Tribal Court, in writing, no later than 12:00 p.m. on the first day following removal that the order has been complied with; what problems, if any, encountered in removing the child; who has custody of the child and where the child is located.

C. Requirements for emergency orders for removal.

- (1) Every emergency order for removal must:
  - (a) Conform to the requirement of § 5.1-15; and
  - (b) Include a determination, supported by findings of fact, that all other applicable standards for the removal have been met.
- (2) The Gun Lake Tribal Court must, to the extent necessary or reasonable, include in any order for removal or pickup an authorization to enter the specified premises on a specified date to remove or pick up the child and a directive to place the child in protective custody in accordance with the placement preferences of § 5.1-14.
- (3) Every reasonable effort must be made to serve the order for removal by personal service on the parent, guardian, or custodian within 12 hours after it is issued. If no parent, guardian, or

custodian can be located, the order for removal must be personally served on any adult residing in the same home as the parent(s) of the child(ren) subject to the removal. If no adult resident is present in the home, the order for removal must be left in a prominent place at the home and every reasonable effort must be made to serve any known adult member of the child's immediate family or household.

- D. Grounds for removal corrected. The child may be returned to the parent, guardian, or custodian upon a motion filed with the Gun Lake Tribal Court by the parent, guardian, or custodian and supported by evidence satisfactory to the Gun Lake Tribal Court that the grounds for removal have been eliminated, and the child is no longer a child in need of protection.
- E. Removal of an alleged perpetrator. As an alternative to removing a child, the Gun Lake Tribal Court may, on a petition filed by the Health and Human Services Department, order the removal of a person residing within the home of the child on a finding that there is probable cause to believe that such person is the cause of the abuse or neglect of the child. The Presenting Officer will assist the Health and Human Services Department as needed. Except as otherwise provided by a Gun Lake Tribal Court order, the procedural requirements for a proceeding initiated under this subsection must conform to the relevant procedural requirements set forth in § 5.1-20B.
- F. Notice of removal.
- (1) Notice to the Presenting Officer and to the Gun Lake Tribal Court. After a child is removed from his or her home with a Gun Lake Tribal Court order, the person who removed the child must provide notice to the Presenting Officer and to the Gun Lake Tribal Court within six hours of the removal.
  - (2) Notice to child's Indian tribe if different than MBPTthe Tribe. If the Gun Lake Tribal Court asserts jurisdiction over a person who is a member of a federally recognized Indian tribe, band or group, other than the MBPTTribe, the Gun Lake Tribal Court will promptly notify such other tribe that jurisdiction has been asserted over a member of that tribe.
  - (3) Notice to the Family Welfare CommitteeMDT. The Health and Human Services Department and the Presenting Officer must provide prompt notice of the removal to the Family Welfare CommitteeMDT and must seek its guidance regarding subsequent proceedings involving the child.
- G. Requirements for orders confirming removal. Every order confirming removal must:
- (1) Conform to the requirements of § 5.1-15; and
  - (2) Include a determination, supported by findings of fact, that all other applicable standards for the removal have been met.
- H. Emergency petition for medical care.
- (1) Emergency petition for medical care.
    - (a) Standard for emergency petition for medical care. Except when the standard under Subsection H(2)(a) for emergency medical care without a Gun Lake Tribal court order has been met, the Health and Human Services Department must prepare an emergency petition seeking an order from the Gun Lake Tribal Court, authorizing emergency medical care, including examination and treatment, of a child in protective custody in all cases where there is probable cause to believe that the child faces a substantial risk of harm if medical care is not promptly provided to the child. The Presenting Officer will assist the Health and Human Services Department as needed.
    - (b) Filing, service of process, and hearing procedures. Except as otherwise provided by Gun

Lake Tribal Court order, the procedural requirements for a proceeding initiated under this Subsection H must conform to the relevant procedural requirements set forth in § 5.1-18B.

- (2) Emergency medical care without a Gun Lake Tribal Court order.
  - (a) Standard for emergency medical care without a Gun Lake Tribal Court order. Emergency medical care without a Gun Lake Tribal Court order for a child in protective custody will not occur unless diligent efforts have been made to obtain an emergency order for medical care from the Gun Lake Tribal Court. However, if upon a determination by the Gun Lake Public Safety Department, in consultation with the Health and Human Services Department, that probable cause exists to believe that the child faces an imminent risk of substantial harm if medical care is not immediately provided to the child, emergency medical care without a Gun Lake Tribal Court order can be sought.
  - (b) Notice to the Presenting Officer and the Gun Lake Tribal Court. After a child is provided medical care without a Gun Lake Tribal Court order, the person who sought medical care for the child must provide notice of the emergency medical care to the Presenting Officer and to the Gun Lake Tribal Court within six hours of the medical care being obtained.
  - (c) Preparation of reports concerning the emergency medical care. The Gun Lake Public Safety Department and the Health and Human Services Department must prepare a written report for every child that receives emergency medical care without a Gun Lake Tribal Court Order. The report must be filed by 12:00 noon with the Gun Lake Tribal Court on the first business day after the emergency medical care was obtained. The report must include all the relevant facts and conclusions relied upon to support the decision to provide the child with emergency medical care without a Gun Lake Tribal Court order. Detailed descriptions, including medical evaluations, medications, surgical or other treatment and copies of all medical documents related to the medical care provided to the child, must be attached to the reports. If a state social services agency was involved in providing the child with emergency medical care, the Health and Human Services Department will be responsible for obtaining a report from the state agency in compliance with this provision.
  - (d) Preparation and filing of petition, service of process, and hearing procedures. Except as otherwise provided by an order of the Gun Lake Tribal Court, the procedural requirements for a proceeding initiated under this Subsection H must conform to the relevant procedural requirements set forth in § 5.1-18A. The Presenting Officer will assist the Health and Human Services Department as needed.
- (3) Medical costs. If no health service provider, including Indian Health Services, or health insurance company is responsible for the payment of medical costs, they will be paid by the Gun Lake Tribal Court for a child not in protective custody and by the Health and Human Services Department for a child in protective custody. The Gun Lake Tribal Court may, on its own initiative or on application from the Health and Human Services Department, hold a hearing and enter an order that requires the parent, custodian, or guardian to reimburse the Gun Lake Tribal Court or the Health and Human Services Department for medical costs incurred.
- (4) Religious and traditional healing. In making an order authorizing medical treatment under this section, the Gun Lake Tribal Court will give due consideration to any health practices or treatment previously provided to the child in accordance with recognized tribal or other religious customs or traditions.
- (5) Requirements for orders regarding emergency medical care. Every order authorizing emergency medical care must include a statement that it is contrary to the welfare of the child to be deprived of medical care and will include all findings of fact supporting the determination that the standard for emergency medical care has been met. The Gun Lake Tribal Court will specify the

type of medical care that is ordered and, if reasonable, identify a medical facility or authorized doctor to provide an examination or treatment.

**§ 5.1-19. Child protection petitions; and consent decrees.**

**A. Decision to file a child protection petition.**

- (1) Promptly after the completion of the preliminary investigations regarding a possible child in need of protection by tribal or state social service and law enforcement agencies and, if time permits, prior to filing a child protection petition with the Gun Lake Tribal Court, the Department of Health and Human Services and the Presenting Officer must make diligent efforts to present the reports of such investigations to the ~~Family Welfare Committee~~ MDT in order to obtain the Committee's recommendations.
- (2) The ~~Director of the~~ Health and Human Services Department may, with due consideration to any recommendations of the ~~Family Welfare Committee~~ MDT, request that the Presenting Officer initiate formal child protection proceedings by filing a child protection petition in the Gun Lake Tribal Court on behalf of the Tribe.
- (3) The Presenting Officer may, with due consideration to any recommendations of the ~~Family Welfare Committee~~ MDT and request or lack thereof from the ~~Director of the~~ Health and Human Services Department, prepare and file a child protection petition in the Gun Lake Tribal Court on behalf of the Tribe.

~~(3)~~

~~B. Mandatory petition following an emergency removal. If the Gun Lake Tribal Court issues an order confirming a removal upon an emergency petition, the Presenting Officer must file a child protection petition within three days of the date the order authorizing removal was issued.~~

~~C.B.~~ Contents of child protection petition. The petition must, to the extent such information is available, set forth the following with specificity:

- (1) The name, birth date, sex, address, and tribal affiliation of the child;
- (2) The basis for the Gun Lake Tribal Court's jurisdiction;
- (3) The specific allegations which cause the child to be a child in need of protection;
- (4) A plain and concise statement of the facts upon which the allegations that the child is a child in need of protection are based, including the date, time, and location where the alleged facts occurred;
- (5) The names, addresses, and any tribal affiliation of the child's parents, guardians, or custodians, if known. If the identity, residence, or location of any parent, guardian, or custodian is unknown, the name, relationship, and address of any known adult relatives residing in the same city or county as the child;
- (6) The names, relationship, and addresses of all known adult members of the child's extended family and all former caregivers, if known;
- (7) In those cases where the child has been removed from his or her home, the facts necessitating the removal, the date and time of the removal, and the agency with whom the child has been placed unless the Presenting Officer, following consultation with the Health and Human Services Department, determines that disclosure of the child's location will expose the child to



a substantial risk of emotional or physical harm;

- (8) The names, addresses, and telephone numbers of the Presenting Officer, Health and Human Services Department's staff, and the staff of any state or state-authorized agency assigned to the case;
- (9) If any information required to be set forth by this section cannot be obtained, a statement that such information was unavailable at the time the petition was prepared and a description of the efforts to be undertaken to obtain such information; and
- (10) The type of relief requested, including whether temporary or permanent custody is sought.

~~D.C.~~ Investigative reports. All available investigative reports and any recommendations of the ~~Family Welfare Committee~~MDT pertaining to the case must be appended to the petition.

~~E.D.~~ Filing. The petition must be filed with the Gun Lake Tribal Court in accordance with the applicable rules of the Gun Lake Tribal Court.

~~F.E.~~ Service. Service of the child protection petition must be in accordance with the requirements of § 5.1-12D of this chapter.

#### F. Informal and Formal Consent Decrees

(1) Informal Agreement. The Health and Human Services Department may enter into an informal agreement with the parent(s), guardian(s), or custodian(s), and other parties when the Department determines that the interests of the child(ren) do not require filing of a Protection Petition and the facts of the case lead the Department to believe that the Gun Lake Tribal Court would have jurisdiction over the matter. This informal agreement shall be in writing and signed by the parties.

(a) If at any time during the period of the informal agreement the Health and Human Services Department determines that the obligations imposed under the agreement are not being met, the Department may cancel the agreement and file a Protection Petition with the Gun Lake Tribal Court.

(b) The informal agreement will remain in effect for up to six (6) months, from the date signed, unless the child(ren), parent(s), guardian(s), or legal custodian(s) are discharged sooner or upon mutual consent of the parties.

(c) If, upon the expiration of the informal agreement, its express terms and conditions have not been fulfilled, then the Health and Human Services Department may file a Protection Petition.

2. Formal Agreement. The Health and Human Services Department, with approval from the Gun Lake Tribal Court, may enter into a consent decree with the parent(s) guardian(s), or custodian(s), and other parties anytime between the filing of a Child Protection Petition and the entering of a dispositional order.

(a) A Consent Decree is an enforceable Court Order.

(b) If at any time during the period of the Consent Decree, the Health and Human Services Department determines that the obligations imposed under the agreement are not being met, the Department, with assistance from the

Presenting Officer, may motion the Court to revoke the Consent Decree and proceed with the Child Protection proceedings as if the Consent Decree had never been entered into.

- (c) The Consent Decree will remain in place for six (6) months from the date signed, unless the child(ren), parent(s), guardian(s), or legal custodian(s) are discharged sooner. The Court may extend a Consent Decree for six (6) additional months upon motion of the Court, or either one of the parties.
- (d) The Consent Decree shall include language regarding the requirement to have a Status Hearing two (2) weeks prior to the expiration of the Consent Decree.
- (e) If, upon the expiration of the Consent Decree, its express terms and conditions have not been fulfilled, the Court shall continue forward with the proceedings upon the initially filed Petition as if the Consent Decree had never been entered into.
- (f) The Health and Human Services Department shall be provided the opportunity to file an amended Petition if circumstances have changed since the initial filing.

#### **§ 5.1-20. Preliminary hearings.**

- A. Purposes. A preliminary hearing will be conducted for the following purposes:
  - (1) To determine if probable cause exists to believe that a child is a child in need of protection, unless probable cause was established previously at a hearing on an emergency petition;
  - (2) To advise the parents, guardian, or custodian of the nature and purpose of the proceeding and of their rights;
  - (3) To provide the parents, guardian, or custodian an opportunity to enter a plea; and
  - (4) If the child is in protective custody, determine if there is an adequate alternative to safeguard the child.
- B. Requirement for a preliminary hearing. A preliminary hearing will be conducted in all proceedings initiated by a child protection petition; provided, however, that if a proceeding was initiated by an emergency petition pursuant to § 5.1-18, a preliminary hearing will only be required if the hearing on the emergency petition was conducted on an ex parte basis and the parents, guardian, or custodian file a request for a preliminary hearing with the Gun Lake Tribal Court within five days of the date of the order confirming removal.
- C. Time frame for conducting the preliminary hearing. The Gun Lake Tribal Court will conduct a preliminary hearing within:
  - (1) Two days of the date the request for a preliminary hearing was filed with the Gun Lake Tribal Court if the child is in protective custody and the request is in compliance with the requirements of Subsection B; or
  - (2) Three days of the date the child protection petition was filed with the Gun Lake Tribal Court if the child is not in protective custody.
- D. Service of the petition, notice of preliminary hearing, and summons. Reasonable efforts must be made to serve the petition for child protection, notice of the preliminary hearing, and summons by personal service on the parents, guardians, or custodian promptly after the petition for child protection is filed

with the Gun Lake Tribal Court. If no parent, guardian, or custodian can be located, the petition, notice, and summons must be personally served on any adult residing in the same home as the child. Reasonable efforts include personal contact, telephone or written contact at the residence, place of employment, or other location where the parent, guardian or custodian is believed to frequent. If no adult resident is found, the petition, notice and summons must be left at the home and also served upon any known adult member of the child's immediate family.

- E. Parent, guardian, or custodian not present. If the child's parent, guardian, or custodian is not present at the preliminary hearing, the Gun Lake Tribal Court will inquire into what efforts were made to notify and to obtain the presence of the parents, guardian, or custodian. If it appears that further efforts are likely to produce the child's parent, guardian or custodian, the Gun Lake Tribal Court will recess for not more than three days and direct the Presenting Officer to continue efforts to obtain the presence of the child's parent, guardian, or custodian. Upon a showing to the satisfaction of the Gun Lake Tribal Court that every reasonable effort was made to obtain service on the parents, guardian, or custodian of the child and an inquiry as to why their attendance at the hearing could not otherwise be obtained, the preliminary hearing may be conducted ex parte if the Gun Lake Tribal Court determines that continued efforts to serve the parents, guardian, or custodian will not likely be successful within the next three days.
- F. Preliminary hearing procedure. For all preliminary hearings, the Gun Lake Tribal Court will:
- (1) Read the allegations in the petition in open court, unless the reading of the allegation is waived by the parents, guardian, or custodian;
  - (2) Advise the parents, guardian, or custodian of their respective rights, including the right to a hearing on the allegations in the petition, the right to remain silent, and the right to admit or deny the allegations in the petition;
  - (3) Appoint a guardian ad litem for the child; and
  - (4) Appoint counsel to represent the parents, guardian, or custodian of the child, if necessary.
- G. Plea of admission, plea of denial, or remaining silent. A parent, guardian, custodian, or other respondent may make a plea of admission or a plea of denial, or may remain silent as to the allegations contained in the petition. The consequence of any plea of admission will be to eliminate the need for an adjudication hearing. The plea may be accepted at any time after the filing of the petition, provided that the Tribe and guardian ad litem for the child have notice and opportunity to object before a plea of admission is accepted.
- (1) Before accepting a plea of admission, the Gun Lake Tribal Court must inform the respondent in the open court of the following:
    - (a) That if the Gun Lake Tribal Court accepts the plea of admission, the respondent will give up his or her rights to a bench trial, to have the Tribe prove the truth of the allegations by a preponderance of the evidence, to have witnesses appear and testify under oath on his or her behalf, and to cross-examine the witnesses that may appear against him or her; and
    - (b) That the consequences of the plea include the possibility that the plea will be used to support a petition to terminate the respondent's rights concerning the child.
  - (2) The Gun Lake Tribal Court will not accept a plea of admission until it is satisfied that the allegations contained in the petition are supported and that the plea is knowingly and voluntarily made. Following acceptance and entry of such a plea of admission, ~~if~~ the Gun Lake Tribal Court will enter an Order findings that:
    - (a) The allegations that the child is a child in need of protection are adequately supported by

evidence in the record, the Gun Lake Tribal Court may dispense with the probable cause determination under Subsection H; may proceed to release the child to the custody of the child's parents, guardian, or custodian; or order removal of the child from the parents, guardian, or custodian pursuant to Subsection I(1) or (2). A disposition hearing will be scheduled and held in accordance with § 5.1-22; or

- (b) The allegations that the child is a child in need of protection are not supported by evidence in the record, the Gun Lake Tribal Court may proceed under Subsection I or may schedule an adjudication hearing in accordance with § 5.1-21.
- H. Establishing probable cause. The Gun Lake Tribal Court, in determining whether probable cause exists to believe that the child is a child in need of protection, will hear testimony concerning the facts upon which the petition was initiated.
- I. Probable cause found. If the Gun Lake Tribal Court finds that probable cause exists to believe that the child is a child in need of protection, and the parent, guardian, or custodian remains silent or denies the allegations in the petition, the Gun Lake Tribal Court will order the parent, guardian, or custodian to appear at an adjudication hearing and either:
- (1) Release the child to the custody of the child's parent, guardian, or custodian under such reasonable terms and conditions as are necessary for the protection of the child; or
  - (2) Order removal of the child from the parent, guardian, or custodian or reaffirm a prior removal on an emergency petition if the Gun Lake Tribal Court determines that:
    - (a) It would be contrary to the welfare of the child to remain in the home and custody of the child with a parent, guardian, or custodian who presents a substantial risk of harm to the child;
    - (b) No provision of services or other arrangement, except removal of the child, is reasonably available to adequately safeguard the child from such risk;
    - (c) Active ~~and reasonable~~ efforts were made to prevent removal of the child from the home or that the lack of such efforts was justified under the circumstances such as the existence of an imminent threat of harm to the child in the home; and
    - (d) Conditions of custody away from his or her home are adequate to safeguard the child's health and welfare.
- J. Probable cause not found. If probable cause is not found that the child is a child in need of protection, the Gun Lake Tribal Court will dismiss the petition and the child will be released to the child's parent, guardian, or custodian.
- K. Court ordered evaluations and assessments. The Gun Lake Tribal Court may, at any time after conducting a preliminary hearing at which probable cause to proceed upon a petition is found, order ~~an involved the child(ren), parent, guardian, custodian, or any member of child's household~~ to undergo a physical, mental, psychological, or substance abuse evaluation or assessment by a qualified professional.

#### § 5.1-21. Adjudication hearings.

- A. Purpose. If the minor child's parent(s) or legal guardian(s) chooses to contest the Tribe's Petition, then tThe Gun Lake Tribal Court must conduct an adjudication hearing for the purpose of determining whether the child is a child in need of protection and whether active ~~and reasonable~~ efforts were made to prevent the removal of the child from his or her home.
- B. Commencement. The adjudication hearing will commence as soon as possible but not later than 28

45 days after the date the child was removed from his or her home or the date the child protection petition was filed with the Gun Lake Tribal Court, whichever occurs first.

- C. Continuances. Continuances of an adjudication hearing may be granted by the Gun Lake Tribal Court upon good cause shown ~~and not more than once~~ for a period not exceeding 30+4 days upon one of the following occurrences:
- (1) A stipulation of the parties;
  - (2) Failure to serve the notice of hearing on the parents, guardian, or custodian;
  - (3) The Gun Lake Tribal Court finds that the testimony of a presently unavailable witness is necessary; or
  - (4) A parent, guardian, or custodian requests an opportunity to obtain legal counsel.
- D. Adjudication order. An adjudication order will be issued by the Gun Lake Tribal Court not more than seven days from the date of the adjudication hearing. Any adjudication order concerning a child removed from his or her home must conform to the requirements of § 5.1-18.

### § 5.1-22. Disposition hearings.

- A. Purpose. The purpose of a disposition hearing is to determine what measures should be taken with respect to a child found to be a child in need of protection.
- B. Timing and notice. A disposition hearing may be held immediately after the adjudication if a case service plan has been served on the parties. The interval, if any, between the adjudication and the disposition is within the discretion of the Gun Lake Tribal Court; provided, however, that when the child is in a placement outside the home, the interval may not be more than 35 days from the date of the adjudication hearing except for good cause. If the disposition hearing is not held immediately after the adjudication hearing, a notice of hearing may be deemed given and received by scheduling the hearing on the record in the presence of the parties or in accordance with § 5.1-12C.
- C. Proposed case service plan. The Health and Human Services Department must prepare or must cause the responsible state or state-authorized agency to prepare a written report ("case service plan") describing all reasonable and appropriate alternative dispositions. The case service plan must contain:
- (1) A specific plan for the care of, and services to, the child and the child's parents, guardian, or custodian to resolve the problems presented in the petition;
  - (2) A detailed explanation of the necessity for the proposed case service plan and its benefits to the child; and
  - (3) If the case service plan recommends placement of the child somewhere other than with the child's parents, guardian, or custodian, it must state with specific reasons for the placement recommendation and provide an explanation of good cause for any deviation from the placement preferences defined in § 5.1-14, including all efforts undertaken to comply with those requirements.
- D. Service of case service plan. Except as provided otherwise by a Gun Lake Tribal Court order, the responsible agency must file the case service plan with the Gun Lake Tribal Court and must serve copies of the case service plan on all parties and other persons entitled to a notice of hearing under § 5.1-12C and in compliance with the requirements for service stated in § 5.1-12C.
- E. Disposition orders.
- (1) Issuance. The Gun Lake Tribal Court must issue a disposition order within seven days of the date of the disposition hearing and after considering the proposed case service plan and other

evidence, testimony, and arguments offered at the hearing. The Gun Lake Tribal Court will adopt a case service plan and may enter such further orders as it considers necessary in the best interests of the child, the best interests of the extended family, and the best interests of the Tribe or other Indian tribe with whom such child is affiliated.

- (2) Placement preferences. The disposition order must comply with the placement preferences in § 5.1-14 or must include findings of fact supported by evidence in the record establishing good cause for any deviation from the placement preferences.
  - (3) Removal compliance. The disposition order must comply with the removal requirements of § 5.1-15 to the extent applicable and must also include a judicial determination with findings of fact supported by evidence in the record that placement of the child outside his or her home continues to be necessary and appropriate, including the likely harm to the child if the child is returned to his or her parent, guardian, or custodian.
- F. Reimbursement for care. Parents, custodians, or guardians may be ordered by the Gun Lake Tribal Court to reimburse tribal, state agencies, or state-authorized agencies for the cost of care and placement of the child.
- G. Child support. Parents, custodians, or guardians may be ordered by the Gun Lake Tribal Court to make child support payments for children who are ~~not Title IV-E<sup>1</sup> eligible, when~~ placed with persons who are not eligible for foster care payments or when the foster care payments will not cover the reasonable cost of caring for the children.

H. Post-Adjudication Evaluations and Assessments. The Gun Lake Tribal Court may, at any time after conducting a Disposition Hearing, order the parent(s), guardian(s), custodian(s) or any member of the child's household to undergo a physical, mental, psychological, or substance abuse evaluation or assessment by a qualified professional as part of the Case Service Plan. The parties may consent to such evaluations at any time before the entrance of a dispositional order, or as part of a consent decree.

### § 5.1-23. Disposition review hearings.

- A. Review. Absent good cause for a brief extension, the disposition order must be reviewed by the Gun Lake Tribal Court at least once every 91 days from the date of the last disposition order. The Gun Lake Tribal Court can order an earlier review hearing if:
- (1) The parent, guardian, or custodian has resolved the problem that initially required removal of the child from the home;
  - (2) The Gun Lake Tribal Court determines an earlier review is necessary to gauge progress of a court ordered services; or
  - (3) For good cause upon request from any of the parties.
- B. Scope of review. At a disposition review hearing, the Gun Lake Tribal Court will determine the continuing necessity and appropriateness of the child's placement outside his or her home if the child has been removed. The Gun Lake Tribal Court will review, on the record, whether the child's basic, special, and educational needs are being met and if there is compliance with the most current case service plan adopted by the Gun Lake Tribal Court and all Gun Lake Tribal Court orders in the proceeding. The Gun Lake Tribal Court will, in evaluating the success of the case service plan, consider each of the following:
- (1) Services. Compliance by agencies required to provide services to the child and his or her parents, guardian, or custodian and whether the parents, guardian, or custodian complied with the requirements and benefited from the services.
  - (2) Active efforts inquiry. If the parents, guardian, or custodian did not comply with the requirement



for services or do not appear to have gained the desired benefit from services, the Gun Lake Tribal Court will make an inquiry into the active efforts taken by service providers to obtain the compliance of the parents, guardian, or custodian or improve the benefit from the services.

- (3) Visitation. If visitation did not occur or was infrequent, the Gun Lake Tribal Court will determine why visitation did not occur or was infrequent.
  - (4) Other provisions. The extent to which the parents, guardian, or custodian complied with all other provisions of the case service plan and Gun Lake Tribal Court orders.
  - (5) Continued placement. Likely harm to the child if the child continues to be placed outside the home of his or her parents, guardian, or custodian.
  - (6) Reunification. Likely harm to the child if the child is returned to his or her parents, guardian, or custodian.
- C. Extent of progress. After review of the case service plan, the Gun Lake Tribal Court will determine the progress made toward alleviating or mitigating the conditions that caused the child to become and to remain a child in need of protection. The Gun Lake Tribal Court may modify any part of the case service plan, including, but not limited to, the following:
- (1) Additional services. Prescribing additional services that are necessary to rectify the conditions that caused the child to become and to remain a child in need of protection.<sup>1</sup>
  - (2) Additional actions. Prescribing additional actions to be taken to rectify the conditions that caused the child to become and to remain a child in need of protection.

#### § 5.1-24. Permanency planning.

- A. Permanency ~~plan petition~~. For every child adjudicated to be a child in need of care who has been removed from his or her parents, guardian, or custodian, the Health and Human Services Department will prepare a permanency plan that complies with § 5.1-14, Placement of children, and will file the permanency plan with the Gun Lake Tribal Court no later than 11 months from the date ~~of the removal that the Court entered the dispositional order~~. A permanency plan must be filed every 12 months thereafter as long as the child remains a child in need of protection and in a placement away from the parents, guardian, or custodian from whom the child was removed or when requested by the Gun Lake Tribal Court. Service of the permanency plan must be in accordance with § 5.1-12.
- B. Permanency hearing. The Gun Lake Tribal Court will hold a permanency planning hearing no later than 12 months from the date ~~of removal that the Court entered the dispositional order of the child~~ and will hold subsequent permanency planning hearings no later than every 12 months thereafter as long as the child remains a child in need of protection and in a placement away from his or her parents, guardian, or custodian. A permanency planning hearing may be combined with a disposition review hearing under § 5.1-23.
- C. Scope of review. A permanency planning hearing will be conducted to review the status of the child and the progress made toward the child's return to his or her parents, guardian, or custodian or the feasibility of placement in some other permanent home.
- D. Full consideration of return. The Gun Lake Tribal Court will give full consideration to returning the child to his or her parents, guardian, or custodian if such person's rights to the child have not been terminated and the Gun Lake Tribal Court determines that the return of the child would not pose a substantial risk of harm to the child. The failure of the parents, guardian, or custodian to substantially comply with the terms and conditions of the case service plan and disposition orders of the Gun Lake Tribal Court creates a rebuttable presumption that return of the child to the parents, guardian, or

<sup>1</sup> Editor's Note: See 42 U.S.C. § 670 et seq.

custodian will pose a substantial risk of harm.

- E. Alternative permanent placement plans. If the Gun Lake Tribal Court determines at a permanency planning hearing that the child should not be returned to his or her parents, guardian, or custodian because return would pose a substantial risk of harm to the child, the Health and Human Services Department must propose an alternative permanent placement plan which complies with the placement preferences in § 5.1-14, Placement of children, or must provide good cause for any deviation from such requirements.
- F. Tribal Court orders regarding permanency plans. Every Gun Lake Tribal Court order regarding a permanency plan must include findings of fact as to whether reasonable efforts have been made to finalize a permanency plan.

F.G. Revoked Consent Decree and Permanency Planning. In the event that the Court approved and entered a Consent Decree and later revoked the Consent Decree, the Department of Health and Human Services shall calculate the time a child has been in out-of-home placement during the Consent Decree for purposes of making a recommendation in the permanency plan.

#### **§ 5.1-25. Voluntary relinquishment of parental rights.**

- A. Presence in court required. Parental rights may be voluntarily relinquished by a parent. The request must be in writing and signed by the parent(s) in the presence, and with the approval, of the Gun Lake Tribal Court.
- B. Twenty-eight-day period until approval. A relinquishment of parental rights will not be approved by the Gun Lake Tribal Court prior to 28 days after the date the relinquishment is first made, provided that no relinquishment will be valid if made prior to the birth of the child.
- C. Denial of request for relinquishment. The Gun Lake Tribal Court may deny a request for relinquishment of parental rights if the request involves improper motivations, such as fraud, duress, or a desire to avoid financial obligations to the child.
- D. Consequences must be understood. The Gun Lake Tribal Court will not approve the request without first ensuring that the parent understands the consequences of the voluntary relinquishment.
- E. Withdrawal of relinquishment. The parent may withdraw the relinquishment of parental rights at any time before the Gun Lake Tribal Court enters a final order approving the relinquishment and termination of the parent's rights to the child. Section 5.1-26E and F will apply to any order terminating parental rights under this section.

#### **§ 5.1-26. Suspension or termination of parental rights.**

- A. Purpose. The purpose of this section is to provide for the involuntary suspension or termination of the parent-child relationship in child protection cases and for the substitution of parental care and supervision by judicial process. This section will be construed in a manner consistent with the philosophy that the family unit has the most value to the community and the individual members of the family when that unit remains intact. Suspension or termination of the parent-child relationship should be used only as a last resort when the record of the proceeding reflects that all efforts to avoid suspension or termination have been made and have failed and it is in the best interests of the child to proceed under this section.
- B. Grounds for involuntary termination; burden of proof; hearing requirement. The Gun Lake Tribal Court may suspend or terminate the parental rights of a parent to a child adjudicated a child in need of protection if the Gun Lake Tribal Court finds at a hearing, by clear and convincing evidence, one or more of the following:

- (1) Unrectified conditions. The parent was a respondent in the child protection petition brought under this chapter, 12 or more months have elapsed since the issuance of an ~~initial adjudication~~ dispositional order, and the Gun Lake Tribal Court finds during or following a permanency plan hearing that:
  - (a) The conditions on which the adjudication was based remain substantially unchanged and there is no reasonable likelihood that the conditions will be rectified within a reasonable time reconsidering the age of the child; or
  - (b) Other conditions exist that cause the child to be a child in need of protection, and there is no reasonable likelihood that such other conditions will be rectified within a reasonable time considering the age and circumstance of the child.
- (2) Abandonment. A parent of the child has abandoned the child without provision for support or without communication with the Gun Lake Tribal Court, officers of the Gun Lake Tribal Court, or the Health and Human Services Department personnel for a period of at least six months. The failure to provide support or to communicate for a period of at least six months will be presumptive evidence of the parent's intent to abandon the child. The intentional placement of the child with a caregiver in the immediate family or extended family of the child will not be considered abandonment in the absence of other evidence of abandonment.
- (3) Child abuse. A child or a sibling of a child will be deemed a victim of child abuse if the child has suffered from abuse as defined in § 5-1.3, Definitions, or under either of the following circumstances:
  - (a) A parent's act caused the abuse, and the Gun Lake Tribal Court finds that there is a reasonable likelihood that the child will suffer abuse in the foreseeable future if placed in the parent's home; or
  - (b) A parent who had the opportunity to prevent the abuse failed to do so and the Gun Lake Tribal Court finds that there is a reasonable likelihood that the child will suffer abuse in the foreseeable future if placed in the parent's home.
- (4) Child neglect. The parent has neglected the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age and circumstances of the child.
- (5) Conviction of a crime. The parent is convicted of a violent or a criminal sexual crime against any person or is convicted of any other crime that proves the unfitness of the parent.
- (6) Imprisonment for more than two years. The parent is imprisoned for over two years and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child.
- (7) Parental rights to sibling suspended or terminated. The rights of the parent to one or more siblings of the child have been suspended or terminated due to neglect or abuse and prior attempts to rehabilitate the parent have been unsuccessful.

C. Suspension or termination at initial disposition hearing.

- (1) The ~~Family Welfare Committee~~ MDT may recommend, and the Presenting Officer may seek suspension or termination of parental rights at the initial disposition hearing if:
  - (a) The parent caused the death of the child's other parent, or a sibling of the child;

- (b) The child or a sibling of the child has suffered serious physical injury or abuse or sexual abuse and the parent's act caused the serious physical injury or abuse or sexual abuse of the child and the Gun Lake Tribal Court finds there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home;
  - (c) The child or sibling of the child has suffered serious physical injury or abuse or sexual abuse and the parent who had the opportunity to prevent the serious physical harm or injury or sexual abuse failed to do so and the Gun Lake Tribal Court finds there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home; or
  - (d) Parental rights to one or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parent have been unsuccessful.
- (2) The Gun Lake Tribal Court may enter an order suspending or terminating parental rights at the initial disposition hearing, provided that the petition to suspend or terminate parental rights has been filed with the Gun Lake Tribal Court and service of the petition on the parent and other parties complies with § 5.1-12.
- D. Suspension or termination of parental rights order. An order suspending or terminating parental rights under this chapter must include findings of fact and conclusions of law, including the statutory basis for the order. The Gun Lake Tribal Court may issue a decision on the record immediately following the hearing, however a written decision must be entered within 28 days after ~~the record in~~ the hearing ~~is closed~~. Every order suspending or terminating parental rights must include a statement that a respondent parent is entitled to Appellate Review of the order.
- E. Effect of suspension. Upon the suspension of parental rights, all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, or visitation existing between the child and the parent will be suspended unless otherwise provided in the suspension order. Any child support obligation existing prior to the effective date of the suspension order will remain intact. The rights of one parent may be suspended without affecting the rights of the other parent. A parent may not, however, inherit from a child after suspension.
- F. Effect of termination. Upon the termination of parental rights, all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, visitation or support existing between the child and the parent will be severed and terminated unless otherwise provided in the termination order. The parent will have no standing to appear at any future legal proceeding concerning the child. Any child support obligation existing prior to the effective date of the order terminating parental rights will not be severed or terminated. The rights of one parent may be terminated without affecting the rights of the other parent. A parent may not, however, inherit from a child after termination.
- G. Child's continued rights to benefits. An order suspending or terminating the parent-child relationship will not disqualify a child from any benefit due to the child from any third person, agencies, states, or the United States. A suspension or termination order will not prevent a child from inheriting property or interest in the same manner as any other child from the parent whose rights were suspended or terminated under this chapter. Nor will any action under this chapter be deemed to affect any rights and benefits that the child derives from the child's descent from a member of a federally recognized Indian tribe.

#### § 5.1-27. Permanent ward review hearing.

A permanent ~~këwabmogéyoyen ward~~-review hearing will be conducted at least once every 91 days to review the status of any child who is a permanent ~~këwabmogéyoyenward~~ of the Gun Lake Tribal Court

and to review the progress made to establish a permanent placement for the ~~ward~~child.

**§ 5.1-28. Full guardianship for permanent ~~këwabmogéyovenswards~~ of Gun Lake Tribal Court.**

- A. Purpose. ~~When necessary, the~~The Gun Lake Tribal Court may appoint a guardian and/or conservator for any child who is a permanent ~~këwabmogéyoyen ward~~ of the Gun Lake Tribal Court. Unless provided otherwise by a Gun Lake Tribal Court order, a guardian will be responsible for the care and custody of a child and the preservation of the child's income, assets, and property. A guardian will serve until the child reaches 18 years of age, is emancipated, dies, or the guardian is discharged from such duties by the Gun Lake Tribal Court. A conservator will only be responsible for the preservation of the child's income, assets, and property. A conservator will serve until the child reaches 18 years of age, is emancipated, dies, or is discharged from such duties by the Gun Lake Tribal Court.
- B. Grounds. The Gun Lake Tribal Court may appoint a guardian for a child after the Court has suspended or terminated the parent's rights, and the Court determines that if the appointment is necessary for the immediate welfare in the best interest of the child.
- C. Who may file. The Presenting Officer may file a petition for guardianship on behalf of the Health and Human Services Department.
- D. Contents of petition. The petition for guardianship will, to the extent available, include the following information:
- (1) The full name, sex, date and place of birth, and residence of the childward;
  - ~~(2)~~ (2) The proposed guardian's full name, address, tribal affiliation, relationship, if any, to the childward;
  - ~~(2)(3)~~ (3) The names and addresses of the child's parent(s), or if any of the parents are deceased, the date of the death.
  - ~~(3)(4)~~ (4) The names and addresses of other persons known to have an interest in the petition;
  - ~~(4)(5)~~ (5) The name and address of any person or agency having legal or temporary custody of the childward;
  - ~~(5)(6)~~ (6) A statement of the reason that the appointment of a guardian is sought and whom the petitioner recommends to be appointed as guardian; and
  - (7) A full description and statement of value of the ward's assets and liabilities with an estimate of the value of any property owned, possessed, or in which the proposed ward has an interest, including any income and accounts receivable to which the ward is entitled.
  - ~~(6)(8)~~ (8) A list of people willing and able to become a successor guardian and/or conservator in the sudden event that the guardian and/or conservator, if appointed, cannot carry out their duties.
- E. Report. Concurrent with the filing of a petition, the Health and Human Services Department must submit a report on the proposed guardian. The report must contain all pertinent information necessary to assist the Gun Lake Tribal Court in determining the suitability of the proposed guardian and the best interests of the ~~child~~proposed ward.
- F. Notice. Before appointing a guardian, the Gun Lake Tribal Court must give notice as follows:
- (1) If parental rights are suspended, notice must be given to:
    - (a) The ~~child's~~ward's guardian ad litem; and
    - (b) All interested parties, including without limitation the child, parents, immediate family,

custodian, agencies and persons caring for the child, and such other persons as the Gun Lake Tribal Court deems proper.

- (2) If parental rights are terminated, notice must be given to the child's ward's guardian ad litem, child, custodian, agencies and persons caring for the child, and such other persons as the Gun Lake Tribal Court deems proper.

G. Appointment of guardian or conservator. The Gun Lake Tribal Court must conduct a hearing on the petition for guardianship. The Gun Lake Tribal Court may, in its discretion, require that a guardian or conservator be bonded in such amount as the Gun Lake Tribal Court may deem necessary to protect the childward's income, assets, and property.

H. Powers and duties of a guardian. To the extent, that is not inconsistent with terms of any Gun Lake Tribal Court order, a guardian has the following powers and duties:

- (1) The guardian has custody of the ward-këwabmogéyoyen and will make provisions for the childward's care, comfort and maintenance. The guardian will, as appropriate, arrange for the childward's training, education, employment, and rehabilitation. The guardian will take reasonable care of the childward's personal possessions and will be responsible as a fiduciary regarding the childward's income and assets;

- (2) In arranging for a place of residence, the guardian will give preference to places within the service area, if placement within or outside of that area would be substantially equivalent. The guardian will also give preferences to places that are not treatment facilities. If the only available and appropriate places, are treatment facilities, the guardian will give preference to tribal-based treatment facilities, over non-tribal-based treatment facilities; and

- (3) The guardian will have the authority to consent to any medical, legal, psychological or other professional care, counsel, treatment or services for the wardchild. The guardian may give any other consent or approval on the ward's-child's behalf that may be required, appropriate or in the childward's best interest. The guardian may seek the approval of the Gun Lake Tribal Court for such decisions as the guardian deems necessary or appropriate.

I. Powers and duties of a conservator. To the extent, that is not inconsistent with terms of any Gun Lake Tribal Court Order, a conservator has the following powers and duties:

- (1) The conservator will preserve and maintain all of the ward's income, assets and property;

- (2) The conservator will hold all accounts, financial instruments, stocks, bonds, securities, and other assets of the ward in the conservator's name for the benefit of the ward; and

- (+)(3) The conservator will have the authority to acquire, sell, trade, transfer, or dispose of the assets and property of the ward.

J. Reimbursement for administration expenses. The guardian or conservator is entitled to be reimbursed out of the ward's estates or against the parents' per capita distribution for necessary, reasonable and proper expenditures incurred in the performance of his or her duties, subject to limitations and requirements that the Gun Lake Tribal Court may establish. The Gun Lake Tribal Court may order reimbursement payments to be made on a regular schedule or on the guardian/conservator's request. This is subject to the submission of adequate proof of the expenditure, the necessity of the expenditure, and the availability of funds.

I.K. Annual reports. All-gGuardians must file reports with the Gun Lake Tribal Court at least annually. They must provide complete and accurate information regarding the condition of the ward, if



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applicable, and a full accounting of all income, assets and property of the ward. If the Court determines to appoint a conservator, then the conservator shall file at least annually a full accounting of the child's income, assets, and property and the guardian will file a report on the child's condition (health, education, and home life).

J.L. Annual review hearing. Upon the filing of a report by the guardian, the Gun Lake Tribal Court may conduct an annual review hearing.

K.M. Resignation. Any guardian who wishes to resign may file a petition with the Gun Lake Tribal Court setting forth the reasons for the resignation request. The petition must be accompanied by a report that conforms to the requirements outlined in § 5.1-35L. The Gun Lake Tribal Court will review the petition and the final report and, if satisfied, the Gun Lake Tribal Court may accept the resignation and release the guardian from their duties.

L.N. Appointment of successors. Upon the removal, death or resignation of a guardian, the Gun Lake Tribal Court will, if necessary, appoint a successor. Prior to the appointment of a successor, the Gun Lake Tribal Court will refer the ward-child to the Health and Human Services Department for a report and any recommendations. If there is not a successor immediately identified, then the custody of the child shall temporarily return to the custody of the Department of Health and Human Services until otherwise ordered by the Court. The Department shall exercise discretion concerning the child's placement, subject to the review of the Court.

O. Fiduciary duty. All persons acting under a power of attorney, as guardian, and any person or agency appointed to act on behalf of a ward-child under this chapter acts in a fiduciary capacity. As a fiduciary, one owes a duty to act in the best interest of the ward, exercising sound judgment and avoiding conflicts of interest. Any such person or agency that breaches the fiduciary duty will be liable for any damages resulting from the breach.

~~M.~~

### § 5.1-~~2937~~. Adoption.

[Comment Concerning Section: This section is being amended to address only involuntary adoptions. Voluntary adoptions are being moved to a separate draft law titled the Minor Guardianship and Voluntary Adoption Act. It thus makes sense to delete Article III, the General Welfare provisions in this Act, and to narrow the scope of this section to involuntary adoptions to avoid confusion and redundancy.]

A. Jurisdiction. When the Gun Lake Tribal Court has exercised jurisdiction over a child in need of protection under this chapter and ordered a preadoptive placement under § 5.1-~~2937~~H, or waived the preadoptive placement period, the Gun Lake Tribal Court may proceed with an adoption under this section.

B. Types. The MPBI recognizes the following types of adoption:

- (1) Open. The parental rights of the parent(s) have been terminated but visitation rights of the parents and/or other named members of the child's biological family will be maintained as outlined in the final adoption decree.
- (2) Closed. The parental rights of the parent(s) have been terminated and visitation rights of the parent(s) and/or other named members of the child's biological family will not be maintained. All contact by the biological parent(s) and/or family will be ~~forbidden~~prohibited.
- (3) Open customary. Parental rights may be granted to an adoptive party if the parental rights to a child have been suspended. The adoptive parents will have the sole parental authority to make all decisions regarding the care and upbringing of the adopted child(ren). The visitation rights of the parent(s) and/or other named members of the child's biological family will be maintained

as outlined in the final adoption decree.

- (4) Closed customary. Parental rights may be granted to an adoptive party if the parental rights to a child have been suspended. The adoptive parents will have the sole parental authority to make all decisions regarding the care and upbringing of the adopted child(ren). The visitation rights of the parent(s) and/or other named members of the child's biological family will not be maintained.

C. Who may file a petition. ~~Any person over the age of 21 may file an adoption petition. Married persons or a couple maintaining a home together must make a joint petition, except where one spouse is a natural parent of the adoptee.~~ The Presenting Officer may file a petition for guardianship on behalf of the Health and Human Services Department.

D. Parental consent to adoption. ~~The Gun Lake Tribal Court may order an adoption when written consent executed by surviving parent(s) or guardian has been filed with the Gun Lake Tribal Court. The consent must be signed in the presence of a court of competent jurisdiction. The Gun Lake Tribal Court must find that all persons consenting have been informed of the nature and consequences of their actions. The minority age status of a parent(s) will not be a bar to the right of consent nor will it invalidate such consent. When a Petition for Adoption involves a parent(s) whose rights have been suspended, but not terminated, the Gun Lake Tribal Court may then consider that parent(s) written consent. The Gun Lake Tribal Court will not take into consideration a parent(s) consent to adoption if their parental rights were terminated as they would not be an interested party. A parent's written consent under this subsection shall be considered persuasive but not dispositive for purposes of the Court determining whether to enter the Adoption Decree. The consent must be signed in the presence of a court of competent jurisdiction. The Gun Lake Tribal Court must find that all parties consenting have been informed of the nature and consequences of their actions. The minority-age status of a parent(s) will not be a bar to the right of consent, nor will it invalidate such consent.~~

E. ~~Gun Lake Tribal Court consent for permanent wards. The Gun Lake Tribal Court or any other entity authorized to do so may consent to the adoption of children who have been made permanent wards of the Gun Lake Tribal Court pursuant to Article II of this chapter.~~

F. ~~Withdrawal of consent. Consent to adoption may be withdrawn by a parent(s) whose parental rights have not been terminated at any time before the entry of the final adoption decree.~~

G.E. Petition for adoption. The petition for adoption must be signed by the adopting parent(s), filed with the Gun Lake Tribal Court, and must contain:

(1) The full name, residence, documentary proof of the date and place of birth, and the ~~degree of Indian blood~~ Tribal affiliation of the adoptee;

(+)(2) A statement that if the proposed adoptee is eligible for citizenship in the Tribe or other federally recognized Tribe, that the Department of Health and Human Services is working with the child's family to ensure that the child will be enrolled in the Tribe or other federally recognized Tribe before the entrance of an adoption decree.

(2)(3) The full name(s), residence(s), date(s), and place(s) of birth, ~~degree(s) of Indian blood~~ tribal affiliation, if any, occupation(s), and documentary proof of marital status of adopting parent(s);

(3)(4) Proof of parental ~~whether the child's parent(s)~~ consent to the adoption ~~if the parent's rights were suspended and not terminated~~;

(4)(5) A statement by the adopting parent(s) that it is the desire of the adopting parent(s) that the legal relationship of a parent and child be established between them and the adoptee;

(5)(6) A full description and statement of value of all property owned or possessed by the adoptee, to the best of the petitioner's knowledge; ~~and~~

(7) Whether petitioner is seeking an open, closed, open traditional, or closed traditional adoption; and

~~(6)(8)~~ The results of a criminal background check concerning the adopting parents completed within the last 12 months from the date of the filing of the petition for adoption.

~~H.F.~~ Preadoptive placement assessment. ~~The Gun Lake Tribal Court will not order a preadoptive placement until it receives and reviews a preadoptive placement assessment submitted by the~~ The Health and Human Services Department will file a pre-adoptive placement assessment with the petition. A preadoptive placement assessment must contain the following information:

- (1) Age, nationality, race or ethnicity, any religious preference, and tribal affiliation, if any;
- (2) Marital and family status and history, including the presence of other children or adults in the household and the relationship of those individuals to the adoptive parent;
- (3) Physical and mental health, including any history of substance abuse;
- (4) Educational and employment history and any special skills and interests;
- (5) Property and income, including financial obligations as indicated in a current financial report provided by the individual;
- (6) Reason for wanting to adopt;
- (7) The capacity and disposition of the parties involved to immerse the child in the Tribe's culture and traditions;
- (8) Whether the individual has ever been the respondent in a domestic violence proceeding or a proceeding concerning a child who was allegedly abused, dependent, deprived, neglected, abandoned, or delinquent, and the outcome of the proceeding;
- (9) Whether the individual has ever been convicted of a crime; and
- (10) Any fact or circumstance that raises a specific concern about the suitability of the individual as an adoptive parent, including the quality of the environment in the home, the functioning of other children in the household, and any aspect of the individual's familial, social, psychological, or financial circumstances that may be relevant to a determination that the individual is not suitable. A specific concern is one that suggests that placement of any child, or a particular child, in the home of the individual would pose a risk of harm to the physical or psychological well-being of the child.

~~I.~~ Consent of biological parents. A biological parent whose parental rights to a child being considered for adoption have not been terminated by a court of competent jurisdiction may voluntarily consent to the adoption of the child by petitioner.

~~(1)~~ Requirements for validity. Consent to adoption must be executed either:

~~(a)~~ In the presence of a Gun Lake Tribal Court judge after the explanation that:

~~[1]~~ The consent may result immediately in a preadoptive placement with placement with petitioner. Once the preadoptive placement is ordered by the Gun Lake Tribal Court, the parent will have no legally enforceable right to visit or have any contact with the child, unless otherwise ordered by the Gun Lake Tribal Court;

~~[2]~~ The consent may result in a final adoption decree;

~~[3]~~ If, for any reason prior to the entry of a final adoption decree, the petitioner does not retain custody of the child, the child will be returned to the biological parent(s) unless

~~doing so would immediately result in the child being a child in need of protection.~~

~~(b) Without the presence of a Gun Lake Tribal Court judge if on Gun Lake Tribal Court forms which contain:~~

~~[1] A notarized statement of consent by the parent(s) which has two witnesses;~~

~~[2] Assurances that consent was voluntarily executed; and~~

~~[3] An acknowledgement that the parent(s) fully understand(s) the ramifications of the consent.~~

~~(2) Consent conditioned on open adoption. Consent to adoption may be expressly conditioned upon the entry of an order of the Gun Lake Tribal Court approving an open adoption agreement between the parent and petitioner under Subsection J.~~

~~J.G. Open adoption agreements. Simultaneously with, or prior to, execution of a consent to adoptive placement, the parent and petitioner may execute ~~propose the Court approve~~ an open adoption agreement that sets out post-adoption visitation rights of the parent and/or other named members of the child's biological family. ~~Upon accepting consent conditioned on such agreement, the Gun Lake Tribal Court will enter the open adoption agreement as a fully enforceable order. The Gun Lake Tribal Court may enter the open adoption agreement as a fully enforceable order if the Court finds it is in the best interest of the minor child and that such an order would not threaten the safety of the child. If the Gun Lake Tribal Court finds that such agreement would significantly threaten the safety of the child, the Gun Lake Tribal Court may refuse to accept the consent or enter the open adoption order.~~~~

~~K. Recommendation of the health and human services department. Upon completion of the preadoptive placement assessment, the Health and Human Services Department will, in consultation with the MDT, formulate a written recommendation for the Gun Lake Tribal Court.~~

~~L.H. Initial hearing. Within 30~~seven~~ days of the receipt of the recommendation from the Health and Human Services Department~~filing of the petition for adoption~~, the Gun Lake Tribal Court will schedule~~convene~~ a hearing on the petition ~~for adoption~~.~~

~~(1) Notice. The adoptee, adopting parent(s) and any other party of record will be given notice of the hearing and notice of the petition for adoption may be served by certified mail or any other method deemed appropriate by the Court.~~

~~(2) Appearance mandatory. The adoptee and adopting parent(s) must appear in person at the initial hearing, unless, in the discretion of the Court, the parties are allowed to make an appearance virtually using any means of technology prescribed by the Court to conduct the hearing.~~

~~M.I. Waiver of trial custody period. If the adoptee has been in the custody of the proposed adoptive parent(s) for more than six months and the Health and Human Services Department recommends adoption at the initial hearing, the Gun Lake Tribal Court, upon recommendation of the Health and Human Services Department, may waive the trial custody period and the final adoption decree may be entered at the initial hearing.~~

~~N.J. Trial custody period; final hearing. Not less than 90 days, or more than 18~~20~~ days, after the adoptee has been in the custody of the proposed adoptive parent(s), the adoptee and proposed adoptive parent(s) must appear before the Gun Lake Tribal Court. They will report to the Gun Lake Tribal Court about the welfare of the adoptee, the current status of their home, and the desire of the proposed adoptive parent(s) to finalize the adoption.~~

~~O.K. Adoption decree; extension of trial custody period. If the Gun Lake Tribal Court is satisfied that the interests of the adoptee are best served by the proposed adoption, the final adoption decree may be~~

entered. The Gun Lake Tribal Court may order, or the proposed adoptive parent(s) may request, a six-month extension of the trial custody period, after which a final adoption decree must be entered or the adoptee will be placed under the custody of the Gun Lake Tribal Court. The Gun Lake Tribal Court must provide a certified copy of the adoption decree to the Tribal ~~Enrollment office~~Member Benefits Department.

P.L. Effect of the final adoption decree.

- (1) Parent and child relationship. After the final adoption decree is entered, the relation of parent(s) and child and the rights, duties and other legal consequences of a natural relationship of child to parent(s) will thereafter exist between the adoptee and the adoptive parent(s).
- (2) Tribal status not affected. The status of an adoptee as a citizen of the Tribe will not be affected by adoption. An adoptee whom is eligible for citizenship in the Tribe will be enrolled as a tribal citizen prior to finalization of the adoption.
- (3) Assumption of surname. Minors adopted through a final decree of the Gun Lake Tribal Court ~~will may~~ —assume the surname of the person(s) whom they are adopted if culturally appropriate. The Court may require the testimony of a Qualified Expert Witness on the appropriateness of changing a child's surname before determining whether changing the child's surname is appropriate. Factors that the Court shall consider are (1) the child's age; (2) how their birth family name connects them to their Tribal identity; (3) and/or possible compromises such as hyphenating the child's surname with their birthname followed by their adopted parent's surname, by, unless the ordered otherwise.
- (4) Rights of adoptees.
  - (a) Adoptees will be entitled to the same rights of person and property as children or heirs of the adoptive parents.
  - (b) Adoptees will be entitled to the society and companionship of their natural siblings consistent with the provisions of this section.
- ~~(5) Tribal citizenship. Any child of Indian descent who is legally adopted by a citizen of the Tribe will have citizenship rights consistent with Tribal law.~~

Q.M. Confidentiality of proceedings and record. Unless the Gun Lake Tribal Court orders otherwise, hearings held in proceedings under this section will be confidential and held in closed session, without the admission of any person other than the interested parties and witnesses. Any papers, records, petitions, or files pertaining to proceedings, maintained by the Health and Human Services Department or the Gun Lake Tribal Court ~~will be kept in locked files and~~ will not be released to anyone, except by order of the Gun Lake Tribal Court.

R.N. Rights of adoptive children to biological family information. Any child adopted pursuant to this chapter will have the right to obtain information regarding biological parents, including but not limited to the names of their biological parents, child's place of birth, residence of parents at the time of adoption, and known siblings. The Gun Lake Tribal Court will order release of this information only upon a petition after the child reaches 18 years of age, unless the child is emancipated by an order of the Gun Lake Tribal Court, or the child has a medical need for the information.

~~N.~~

**§ 5.1-~~3029~~. Child protection records.**

A. Gun Lake Tribal Court records. A record of all hearings under this chapter must be made and preserved. All Gun Lake Tribal Court records concerning matters under this chapter will be confidential and not open to inspection to any but the following:

- (1) The child;
  - (2) The child's parents, guardian, or custodian;
  - (3) Prospective adopting parent(s);
  - (4) The child's legal counsel or court-appointed guardian ad litem;
  - (5) Director of the Health and Human Services Department, or his/her designee;
  - (6) Gun Lake Public Safety Department and other law enforcement personnel involved with the case;
  - (7) The Presenting Officer;
  - (8) Gun Lake Tribal Court personnel directly involved in the handling of the case; and
  - (9) Any other person by order of the Gun Lake Tribal Court.
- B. Gun Lake Public Safety Department records. Law enforcement records and files concerning a child must be kept separate from the records and files of adults, except to the extent that the records are relevant to a criminal investigation. All law enforcement records concerning matters arising under this chapter will be confidential and not open to inspection until the investigation is closed, and then only to the following:
- (1) Gun Lake Public Safety Department and other law enforcement personnel involved with the case and, as determined by the Gun Lake Public Safety Department Director on a case-by-case basis, the ~~Coordinating Enforcement Team~~MDT;
  - (2) Health and Human Services Department personnel and the personnel of state social services agencies or state-authorized agencies involved with the case;
  - (3) The Presenting Officer; and
  - (4) Any other person by order of the Gun Lake Tribal Court.
- C. Health and Human Services Department records. All Health and Human Services Department records concerning matters arising under this chapter will be confidential and not open to inspection to any but the following persons:
- (1) The child who is the subject of the record;
  - (2) The child's parents, guardian, or custodian;
  - (3) The child's legal counsel or court-appointed guardian ad litem;
  - (4) Gun Lake Public Safety Department and other law enforcement personnel involved with the case;
  - (5) Health and Human Services Department personnel, personnel of state and state-authorized social services agencies involved with the case, and, as determined by the Director of the Health and Human Services Department on a case-by-case basis, and the ~~Family Welfare Committee~~MDT;
  - (6) The Presenting Officer;
  - (7) Gun Lake Tribal Court personnel directly involved in the handling of the case; and
  - (8) Any other person by Gun Lake Tribal Court order.



**§ 5.1-310. Motions for rehearings or reconsideration.**

- A. Time and grounds. A party may seek a rehearing or reconsideration of a final Gun Lake Tribal Court order or decision by a motion filed within 28 days of entry of the order or decision stating the factual and legal basis for the relief sought. The Gun Lake Tribal Court may entertain an untimely motion only for good cause shown.
- B. Notice. The motion must be served on all parties in accordance with the applicable requirements of § 5.1-12 of this chapter.
- C. Response by parties. Any written responses to the motion and replies to the responses must be filed with the Gun Lake Tribal Court and served on all other parties within seven days of receipt of the motion or response.
- D. Ruling by the Court. The Judge may affirm, modify, or vacate the order or decision previously made, in whole or in part, on the basis of the record of the proceeding, the motion and all responses and replies, and any arguments at a hearing regarding the motion.
- E. Stay. The Gun Lake Tribal Court may stay any order or decision pending a ruling on the motion.

**§ 5.1-321. Appeals.**

- A. Time for taking appeal. Any party seeking to appeal a final Gun Lake Tribal Court order or decision issued under this chapter must file a written notice of appeal with the Gun Lake Tribal Court of Appeals within 28 days of the final order. Notice of the appeal must be served on the Gun Lake Tribal Court, all parties to the proceeding, the Health and Human Services Department, and the Presenting Officer.
- B. Record. A record of the proceedings must be obtained by the party seeking the appeal and must be filed with the Gun Lake Tribal Court of Appeals and served on all parties, the Health and Human Services Department, and the Presenting Officer within 30 days of the date the notice of appeal was filed. The appellant will pay the costs of obtaining, filing, reproducing, and serving the record.
- C. Stay on appeal. A Gun Lake Tribal Court order may be stayed upon order of the Gun Lake Tribal Court or the Gun Lake Tribal Court of Appeals.
- D. Conduct of proceedings. All appeals will be conducted in accordance with the court rules and procedures of the Gun Lake Tribal Court.

**§ 5.1-332. Enforcement; violations and penalties.**

A. The Tribal Court may use its contempt powers to enforce its subpoenas or orders should anyone subject to the jurisdiction of the Court willingly violate either a subpoena or order issued by the Gun Lake Tribal Court.

~~A. Criminal violations. Any Indian person who intentionally violates this chapter, willfully fails to comply with any provision of this chapter, or willfully prevents another person from complying with any provision of this chapter will be guilty of a Level B misdemeanor and subject to a fine not to exceed \$1,000 or 180 days in jail, or both. Each day during which a violation under this chapter continues will constitute a separate violation.~~

~~B. Civil violations. Any person who intentionally violates this chapter, willfully fails to comply with any provision of this chapter, or willfully prevents another person from complying with any provision of this chapter will be liable for a civil fine not to exceed \$1,000. Each day during which a violation under this chapter continues will constitute a separate violation. The amount of any civil fine may be recovered in a civil action in the Gun Lake Tribal Court. All civil fines accruing under this chapter~~

~~will be cumulative and a suit for the recovery of one fine will not bar or affect the recovery of any other fine, judgment, penalty, forfeiture, or damages, nor bar the power of the Gun Lake Tribal Court to punish for contempt, nor bar any criminal prosecution.~~

~~ARTICLE III  
General Child Welfare~~

~~[Comment about Article III: Third party guardianships, voluntary adoptions, approval of medical care, delegations of parental authority, and emancipation are being moved to a separate draft law titled the Minor Guardianship and Voluntary Adoption Act. All of the provisions herein will thus be deleted with the exception of involuntary adoptions, which are now reflected above].~~

~~§ 5.1-33. Jurisdiction.~~

- ~~A.—The Gun Lake Tribal Court will have jurisdiction in all general child welfare matters arising under the provisions of this article.~~
- ~~B.—The Gun Lake Tribal Court will have jurisdiction over any child residing within MBPI trust lands and his or her parents, guardians, custodians, and members of the child's household.~~
- ~~C.—Once the Gun Lake Tribal Court asserts jurisdiction over a person, the Gun Lake Tribal Court may retain jurisdiction over that person even if the person leaves the physical boundaries of the MBPI trust lands.~~
- ~~D.—Jurisdiction is continuing and exclusive unless the Gun Lake Tribal Court enters an order terminating its jurisdiction or transferring jurisdiction to another court.~~

~~§ 5.1-34. Delegation of parental authority.~~

~~A.—Delegations of parental powers.~~

- ~~(1)—Delegable parental powers. A parent, guardian, or custodian may delegate to another person powers of a parent regarding the care, custody and property of a child, provided that child is not presently a ward of any court or the subject of a child protection proceeding or investigation. The delegable powers may include consent to admission to a hospital or school, routine dental care, nonsurgical medical care, emergency dental care, and medical or surgical treatment.~~
- ~~(2)—Nondelegable parental powers. A delegation of parental power does not include the power to consent to marriage, nonemergency elective surgery, or adoption.~~
- ~~(3)—Delegations valid for six months. A delegation of parental authority will only be valid for six months from the date of the execution and may be revoked, in writing, at any time by the person or agency delegating the power. A delegation of parental authority is renewable upon execution of a new power of attorney.~~

~~B.—Limited guardianship.~~

- ~~(1)—Establishment. The Gun Lake Tribal Court may, for good cause shown upon a petition of the custodial parent(s) of a child, establish a limited guardianship over a child, provided that the child is neither a ward of any court or the subject of any child protection investigation or proceeding. The Gun Lake Tribal Court may establish the limited guardianship under such terms and conditions as set forth in the written order.~~
- ~~(2)—Visitation. Members of the child's immediate family and extended family will be granted liberal visitation rights subject to the determination of the Gun Lake Tribal Court that such visitation would be in the best interest of the child.~~

~~(3) Termination. A limited guardianship may be terminated upon request of the petitioning parent(s) or the guardian if the Gun Lake Tribal Court determines that there is no longer a need for the guardianship and that it is in the child's best interests to return custody of the child to the parent(s) or custodian.~~

~~(4) Guardianship applicability. Except as may be provided otherwise by Gun Lake Tribal Court order, the applicable guardianship provisions of § 5.1 35I and K through P of this chapter will apply to a limited guardianship.~~

~~§ 5.1 35. Full guardianship or conservatorship.~~

~~B. Purpose. When necessary, the Gun Lake Tribal Court may appoint a guardian or conservator for any child subject to the jurisdiction of the Gun Lake Tribal Court. Unless provided otherwise by a Gun Lake Tribal Court order:~~

~~(1) A guardian will be responsible for the care and custody of a child and the preservation of the child's income, assets, and property. A guardian will serve until the child reaches 18 years of age, is emancipated, dies, or is discharged from such duties by the Gun Lake Tribal Court;~~

~~(2) A conservator will only be responsible for the preservation of the child's income, assets, and property. A conservator will serve until the child reaches 18 years of age, is emancipated, dies, or is discharged from such duties by the Gun Lake Tribal Court.~~

~~C. Grounds. The Gun Lake Tribal Court may appoint a guardian or conservator for a child if the appointment is necessary for the immediate welfare of the child.~~

~~D. Who may file. Any interested person, including the proposed guardian and conservator, may file a petition for guardianship or conservatorship.~~

~~E. Notice. Before appointing a guardian or conservator, the Gun Lake Tribal Court must give notice to all interested parties, including without limitation the child, parents, custodian, agencies and persons caring for the child, and such other person as the Gun Lake Tribal Court deems proper.~~

~~F. Contents of petition. A petition for guardianship or petition for conservatorship will, to the extent available, include the following information:~~

~~(1) The full name, sex, date and place of birth, residence, and tribal affiliation of the proposed ward;~~

~~(2) The petitioner's full name, address, tribal affiliation, relationship, if any, to the proposed ward and a statement regarding the petitioner's interest in the proceeding;~~

~~(3) The names and addresses of the proposed ward's parents or, if the parents or any one of them is deceased, the date and place of the death;~~

~~(4) The names and addresses of other person known to have an interest in the petition;~~

~~(5) The basis for the Gun Lake Tribal Court's jurisdiction;~~

~~(6) The name and address of any person or agency having legal or temporary custody of the proposed ward;~~

~~(7) A statement of the reason that the appointment of a guardian or conservator is sought and whom the petitioner recommends to have appointed as guardian or conservator; and~~

~~(8) A full description and statement of value of the proposed ward's assets and liabilities with an estimate of the value of any property owned, possessed, or in which the proposed ward has an interest, including any income and accounts receivable to which the proposed ward is entitled.~~

~~G.—Signed petitions. All petitions must be dated and signed by the petitioner.~~

~~H.—Report. Upon the filing of a petition, the Gun Lake Tribal Court will immediately request for the Behavioral Health and Human Services Department to conduct an investigation and to generate a report on the proposed guardian or conservator and the proposed ward.~~

~~(1)—Contents of report. The report must contain all pertinent information necessary to assist the Gun Lake Tribal Court in determining the suitability of the proposed guardian or conservator and the best interests of the proposed ward.~~

~~(2)—Report deadline. No determination can be made on a petition until the report has been filed with the Gun Lake Tribal Court and served on all interested parties. The report must be filed with the Gun Lake Tribal Court and served on the parties no later than seven days prior to the hearing.~~

~~I.—Appointment of guardian or conservator. The Gun Lake Tribal Court may make the appointment following review of the petition and report and a hearing with the petitioner, proposed guardian or conservator, proposed ward, and any other interested parties. If, in the opinion of the Gun Lake Tribal Court, a guardian is not necessary, the Gun Lake Tribal Court may appoint a conservator. The Gun Lake Tribal Court may, in its discretion, require that a guardian or conservator be bonded in such amount as the Gun Lake Tribal Court may deem necessary to protect the ward's income, assets, and property.~~

~~J.—Powers and duties of a guardian. To the extent that is not inconsistent with terms of any Gun Lake Tribal Court order, a guardian has the following powers and duties:~~

~~(1)—The guardian has custody of the ward and will make provisions for the ward's care, comfort and maintenance. The guardian will, as appropriate, arrange for the ward's training, education, employment, and rehabilitation. The guardian will take reasonable care of the ward's personal possessions, and will be responsible as fiduciary regarding the ward's income and assets;~~

~~(2)—In arranging for a place of residence, the guardian will give preference to places within the service area, if placement within or outside of that area would be substantially equivalent. The guardian will also give preferences to places that are not treatment facilities. If the only available and appropriate places are treatment facilities, the guardian will give preference to tribal based treatment facilities over non tribal based treatment facilities; and~~

~~(3)—The guardian will have the authority to consent to any medical, legal, psychological or other professional care, counsel, treatment or services for the ward. The guardian may give any other consent or approval on the ward's behalf that may be required, appropriate or in the ward's best interest. The guardian may seek the approval of the Gun Lake Tribal Court for such decisions as the guardian deems necessary or appropriate.~~

~~K.A.—Powers and duties of a conservator. To the extent, that is not inconsistent with terms of any Gun Lake Tribal Court, a conservator has the following powers and duties:~~

~~(1)—The conservator will preserve and maintain all of the ward's income, assets and property;~~

~~(2)(1)—The conservator will hold all accounts, financial instruments, stocks, bonds, securities, and other assets of the ward in the conservator's name for the benefit of the ward; and~~

~~(3)(1)—The conservator will have the authority to acquire, sell, trade, transfer, or dispose of the assets and property of the ward.~~

~~L.A.—Reimbursement for administration expenses. The guardian or conservator is entitled to be reimbursed out of the ward's estates for necessary, reasonable and proper expenditures incurred in the performance of his or her duties, subject to limitations and requirements that the Gun Lake Tribal Court may establish. The Gun Lake Tribal Court may order reimbursement payments to be made~~

~~on a regular schedule or on the guardian/conservator's request. This is subject to the submission of adequate proof of the expenditure, the necessity of the expenditure, and the availability of funds.~~

- ~~M.—Annual reports. All guardians and conservators must file reports with the Gun Lake Tribal Court at least annually. They must provide complete and accurate information regarding the condition of the ward, if applicable, and a full accounting of all income, assets and property of the ward.~~
- ~~N.—Annual review hearing. Upon the filing of a report by the guardian or conservator, the Gun Lake Tribal Court may conduct an annual review hearing.~~
- ~~O.—Resignation. Any guardian or conservator who wishes to resign may file a petition with the Gun Lake Tribal Court setting forth the reasons for the resignation request. The petition must be accompanied by a report that conforms to the requirements outline in § 5.1 35L. The Gun Lake Tribal Court will review the petition and the final report and, if satisfied, the Gun Lake Tribal Court may accept the resignation and release the guardian or conservator from their duties.~~
- ~~P.—Appointment of successors. Upon the removal, death or resignation of a guardian or conservator, the Gun Lake Tribal Court will, if necessary, appoint a successor. Prior to the appointment of a successor, The Gun Lake Tribal Court will refer the ward to the Health and Human Services Department for a report and any recommendations.~~
- ~~Q.—Fiduciary duty. All persons acting under a power of attorney, as guardian or conservator, and any person or agency appointed to act on behalf of a ward under this chapter acts in a fiduciary capacity. As a fiduciary, one owes a duty to act in the best interest of the ward, exercising sound judgment and avoiding conflicts of interest. Any such person or agency that breaches the fiduciary duty will be liable for any damages resulting from the breach.~~

#### ~~§ 5.1-36. Authorization for medical care.~~

- ~~A.—At any time, the Gun Lake Tribal Court may authorize medical care, including examination and treatment, for a child that is not a ward of the Gun Lake Tribal Court when:~~
- ~~(1)—Parent not available. No parent, legal guardian or custodian is immediately available and cannot be found after reasonable effort in the circumstances of the case; or~~
  - ~~(2)—Physician's opinion. A physician testifies under oath in the Gun Lake Tribal Court or states, in writing which is dated and signed by the physician, that in the physician's professional opinion, the life of the child would be greatly endangered without certain treatment or there is probable cause to believe that the child faces an imminent risk of substantial harm if medical care is not immediately provided to the child.~~
- ~~B.—Procedural requirements. Except as otherwise provided by Gun Lake Tribal Court order, the procedural requirements for a proceeding initiated under this section will, to the greatest extent possible, conform to the relevant procedural requirements set forth in § 5.1 18H(1), Emergency petition for medical care.~~

#### ~~§ 5.1-37. Adoption.~~

- ~~S.—Jurisdiction. When the Gun Lake Tribal Court has exercised jurisdiction over a child in need of protection under this chapter and ordered a preadoptive placement under § 5.1 37H, the Gun Lake Tribal Court may proceed with an adoption under this section.~~
- ~~T.—Types. The MPBI recognizes the following types of adoption:~~
- ~~(1)—Open. The parental rights of the parent(s) have been terminated but visitation rights of the parents and/or other named members of the child's biological family will be maintained as outlined in the final adoption decree.~~

- ~~(2) Closed. The parental rights of the parent(s) have been terminated and visitation rights of the parent(s) and/or other named members of the child's biological family will not be maintained. All contact by the biological parent(s) and/or family will be forbidden.~~
- ~~(3) Open customary. Parental rights may be granted to an adoptive party if the parental rights to a child have been suspended. The adoptive parents will have the sole parental authority to make all decisions regarding the care and upbringing of the adopted child(ren). The visitation rights of the parent(s) and/or other named members of the child's biological family will be maintained as outlined in the final adoption decree.~~
- ~~(4) Closed customary. Parental rights may be granted to an adoptive party if the parental rights to a child have been suspended. The adoptive parents will have the sole parental authority to make all decisions regarding the care and upbringing of the adopted child(ren). The visitation rights of the parent(s) and/or other named members of the child's biological family will not be maintained.~~
- ~~U. Who may file a petition. Any person over the age of 21 may file an adoption petition. Married persons or a couple maintaining a home together must make a joint petition, except where one spouse is a natural parent of the adoptee.~~
- ~~V. Parental consent to adoption. The Gun Lake Tribal Court may order an adoption when written consent executed by surviving parent(s) or guardian has been filed with the Gun Lake Tribal Court. The consent must be signed in the presence of a court of competent jurisdiction. The Gun Lake Tribal Court must find that all persons consenting have been informed of the nature and consequences of their actions. The minority age status of a parent(s) will not be a bar to the right of consent nor will it invalidate such consent.~~
- ~~W. Gun Lake Tribal Court consent for permanent wards. The Gun Lake Tribal Court or any other entity authorized to do so may consent to the adoption of children who have been made permanent wards of the Gun Lake Tribal Court pursuant to Article II of this chapter.~~
- ~~X. Withdrawal of consent. Consent to adoption may be withdrawn by a parent(s) whose parental rights have not been terminated at any time before the entry of the final adoption decree.~~
- ~~Y. Petition for adoption. The petition for adoption must be signed by the adopting parent(s), filed with the Gun Lake Tribal Court, and must contain:~~
- ~~(1) The full name, residence, documentary proof of the date and place of birth, and the degree of Indian blood of the adoptee;~~
  - ~~(2) The full name(s), residence(s), date(s), and place(s) of birth, degree(s) of Indian blood, occupation(s), and documentary proof of marital status of adopting parent(s);~~
  - ~~(3) Proof of parental consent to the adoption;~~
  - ~~(4) A statement by the adopting parent(s) that it is the desire of the adopting parent(s) that the legal relationship of a parent and child be established between them and the adoptee;~~
  - ~~(5) A full description and statement of value of all property owned or possessed by the adoptee, to the best of the petitioner's knowledge; and~~
  - ~~(6) Whether petitioner is seeking an open, closed, open traditional, or closed traditional adoption.~~
- ~~Z. Preadoptive placement assessment. The Gun Lake Tribal Court will not order a preadoptive placement until it receives and reviews a preadoptive placement assessment submitted by the Health and Human Services Department. A preadoptive placement assessment must contain the following information:~~



- ~~(1) Age, nationality, race or ethnicity, any religious preference, and tribal affiliation, if any;~~
- ~~(2) Marital and family status and history, including the presence of other children or adults in the household and the relationship of those individuals to the adoptive parent;~~
- ~~(3) Physical and mental health, including any history of substance abuse;~~
- ~~(4) Educational and employment history and any special skills and interests;~~
- ~~(5) Property and income, including financial obligations as indicated in a current financial report provided by the individual;~~
- ~~(6) Reason for wanting to adopt;~~
- ~~(7) The capacity and disposition of the parties involved to immerse the child in the Tribe's culture and traditions;~~
- ~~(8) Whether the individual has ever been the respondent in a domestic violence proceeding or a proceeding concerning a child who was allegedly abused, dependent, deprived, neglected, abandoned, or delinquent, and the outcome of the proceeding;~~
- ~~(9) Whether the individual has ever been convicted of a crime; and~~
- ~~(10) Any fact or circumstance that raises a specific concern about the suitability of the individual as an adoptive parent, including the quality of the environment in the home, the functioning of other children in the household, and any aspect of the individual's familial, social, psychological, or financial circumstances that may be relevant to a determination that the individual is not suitable. A specific concern is one that suggests that placement of any child, or a particular child, in the home of the individual would pose a risk of harm to the physical or psychological well-being of the child.~~

~~AA. Consent of biological parents. A biological parent whose parental rights to a child being considered for adoption have not been terminated by a court of competent jurisdiction may voluntarily consent to the adoption of the child by petitioner.~~

- ~~(1) Requirements for validity. Consent to adoption must be executed either:
  - ~~(a) In the presence of a Gun Lake Tribal Court judge after the explanation that:
    - ~~[4] The consent may result immediately in a preadoptive placement with placement with petitioner. Once the preadoptive placement is ordered by the Gun Lake Tribal Court, the parent will have no legally enforceable right to visit or have any contact with the child, unless otherwise ordered by the Gun Lake Tribal Court;~~
    - ~~[5] The consent may result in a final adoption decree;~~
    - ~~[6] If, for any reason prior to the entry of a final adoption decree, the petitioner does not retain custody of the child, the child will be returned to the biological parent(s) unless doing so would immediately result in the child being a child in need of protection.~~~~
  - ~~(b) Without the presence of a Gun Lake Tribal Court judge if on Gun Lake Tribal Court forms which contain:
    - ~~[4] A notarized statement of consent by the parent(s) which has two witnesses;~~
    - ~~[5] Assurances that consent was voluntarily executed; and~~
    - ~~[6] An acknowledgement that the parent(s) fully understand(s) the ramifications of the consent.~~~~~~

~~(2) Consent conditioned on open adoption. Consent to adoption may be expressly conditioned upon the entry of an order of the Gun Lake Tribal Court approving an open adoption agreement between the parent and petitioner under Subsection J.~~

~~BB. Open adoption agreements. Simultaneously with, or prior to, execution of a consent to adoptive placement, the parent and petitioner may execute an open adoption agreement that sets out post-adoption visitation rights of the parent and/or other named members of the child's biological family. Upon accepting consent conditioned on such agreement, the Gun Lake Tribal Court will enter the open adoption agreement as a fully enforceable order. If the Gun Lake Tribal Court finds that such agreement would significantly threaten the safety of the child, the Gun Lake Tribal Court may refuse to accept the consent or enter the open adoption order.~~

~~CC. Recommendation of the health and human services department. Upon completion of the preadoptive placement assessment, the Health and Human Services Department will, in consultation with the Family Welfare Committee, formulate a written recommendation for the Gun Lake Tribal Court.~~

~~DD. Initial hearing. Within seven days of the receipt of the recommendation from the Health and Human Services Department, the Gun Lake Tribal Court will schedule a hearing on the petition for adoption.~~

~~(1) Notice. The adoptee, adopting parent(s) and any other party of record will be given notice of the hearing.~~

~~(2) Appearance mandatory. The adoptee and adopting parent(s) must appear in person at the initial hearing.~~

~~EE. Waiver of trial custody period. If the adoptee has been in the custody of the proposed adoptive parent(s) for more than six months and the Health and Human Services Department recommends adoption at the initial hearing, the Gun Lake Tribal Court, upon recommendation of the Health and Human Services Department, may waive the trial custody period and the final adoption decree may be entered at the initial hearing.~~

~~FF. Trial custody period; final hearing. Not less than 90 days, or more than 120 days, after the adoptee has been in the custody of the proposed adoptive parent(s), the adoptee and proposed adoptive parent(s) must appear before the Gun Lake Tribal Court. They will report to the Gun Lake Tribal Court about the welfare of the adoptee, the current status of their home, and the desire of the proposed adoptive parent(s) to finalize the adoption.~~

~~GG. Adoption decree; extension of trial custody period. If the Gun Lake Tribal Court is satisfied that the interests of the adoptee are best served by the proposed adoption, the final adoption decree may be entered. The Gun Lake Tribal Court may order, or the proposed adoptive parent(s) may request, a six-month extension of the trial custody period, after which a final adoption decree must be entered or the adoptee will be placed under the custody of the Gun Lake Tribal Court. The Gun Lake Tribal Court must provide a certified copy of the adoption decree to the Tribal Enrollment office.~~

~~HH. Effect of the final adoption decree.~~

~~(1) Parent and child relationship. After the final adoption decree is entered, the relation of parent(s) and child and the rights, duties and other legal consequences of a natural relationship of child to parent(s) will thereafter exist between the adoptee and the adoptive parent(s).~~

~~(2) Tribal status not affected. The status of an adoptee as a citizen of the Tribe will not be affected by adoption. An adoptee whom is eligible for citizenship in the Tribe will be enrolled as a tribal citizen prior to finalization of the adoption.~~

~~(3) Assumption of surname. Minors adopted through a final decree of the Gun Lake Tribal Court will assume the surname of the person(s) whom they are adopted by, unless the ordered otherwise.~~

~~(4) Rights of adoptees.~~~~(a) Adoptees will be entitled to the same rights of person and property as children or heirs of the adoptive parents.~~~~(b) Adoptees will be entitled to the society and companionship of their natural siblings consistent with the provisions of this section.~~~~(5) Tribal citizenship. Any child of Indian descent who is legally adopted by a citizen of the Tribe will have citizenship rights consistent with MBPI law.~~~~II. Confidentiality of proceedings and record. Unless the Gun Lake Tribal Court orders otherwise, hearings held in proceedings under this section will be confidential and held in closed session, without the admission of any person other than the interested parties and witnesses. Any papers, records, petitions, or files pertaining to proceedings, maintained by the Health and Human Services Department or the Gun Lake Tribal Court will be kept in locked files and will not be released to anyone, except by order of the Gun Lake Tribal Court.~~~~JJ. Rights of adoptive children to biological family information. Any child adopted pursuant to this chapter will have the right to obtain information regarding biological parents, including but not limited to the names of their biological parents, child's place of birth, residence of parents at the time of adoption, and known siblings. The Gun Lake Tribal Court will order release of this information only upon a petition after the child reaches 18 years of age, unless the child is emancipated by an order of the Gun Lake Tribal Court, or the child has a medical need for the information.~~**§ 5.1-38. Emancipation of minor.**~~A. Emancipation by operation of law. An enrolled minor of the MBPI may be emancipated by operation of law under any of the following circumstances:~~~~(1) When the minor is validly married;~~~~(2) When the minor reaches the age of 18 years;~~~~(3) During the period when the minor is on active duty with the armed forces of the United States;  
or~~~~(4) For the purposes of consenting to routine, nonsurgical medical care or emergency medical treatment to the minor when the minor is in the custody of a law enforcement agency and the minor's parent or guardian cannot be promptly located. The minor or the minor's parent will remain responsible for the cost of any medical care or treatment rendered pursuant to this subsection. Emancipation pursuant to this subsection will end upon the termination of medical care or treatment or upon the minor's release from custody, whichever occurs first.~~~~B. Emancipation by petition.~~~~(1) A minor seeking emancipation who is an enrolled citizen of the MBPI and has reached 17 years of age must file a petition for emancipation with the Gun Lake Tribal Court. The petition must be signed and verified by the minor and must include all of the following information:~~~~(a) The minor's full name, birth date, and the county and state where the minor was born;~~~~(b) A certified copy of the minor's birth certificate;~~~~(c) The name and last known address of the minor's parents, guardian, or custodian;~~~~(d) The minor's present address and length of residency at that address;~~

- ~~(e) A declaration by the minor indicating that he or she has demonstrated the ability to manage his or her financial affairs. The minor may include any information he or she considers necessary to support the declaration; and~~
- ~~(f) A declaration by the minor indicating that he or she has the ability to manage his or her personal and social affairs. The minor may include in this section any information he or she considers necessary to support the declaration.~~
- ~~(2) The petition must include an affidavit by any adult declaring that the individual has personal knowledge of the minor's circumstances and believes that, under those circumstances, emancipation is in the best interests of the minor.~~
- ~~(3) A copy of the petition and a summons to appear at the hearing will be served on the minor's parents, guardian, or custodian in compliance with the requirements of § 5.1-12 of this chapter. A notice of hearing will be served on the individual who provided the affidavit required under Subsection B(2) above.~~
- ~~(4) The Gun Lake Tribal Court will issue an emancipation order if it determines that emancipation is in the best interest of the minor and the minor establishes all of the following:~~
- ~~(a) The minor's parents, guardian, or custodian do(es) not object to the petition or that the objecting parents, guardian, or custodian will not be providing the minor with support;~~
- ~~(b) The minor is an enrolled citizen of the MBPI and has reached 17 years of age;~~
- ~~(c) The minor is a resident of the state of Michigan;~~
- ~~(d) The minor has demonstrated the ability to manage his or her financial affairs through proof of employment or other means of support, but excluding any financial assistance, per capita payments, or gaming revenue sharing payments from any government;~~
- ~~(e) The minor has adequate housing and the ability to manage his or her personal and social affairs, including, but not limited to, proof of housing; and~~
- ~~(f) The minor understands his or her rights and responsibilities under this section as an emancipated minor.~~
- ~~(5) A minor who petitions the Gun Lake Tribal Court for emancipation will have the burden of showing by a preponderance of the evidence that emancipation should be ordered.~~
- ~~(6) A minor emancipated by operation of law or by Gun Lake Tribal Court order will be considered to have the rights and responsibilities of an adult, except for those specific constitutional, statutory, or regulatory age requirements regarding voting, use of alcoholic beverages, and other health and safety standards involving age limitations.~~
- ~~(7) The parents of a minor emancipated by Gun Lake Tribal Court order are not liable for any debts incurred by the minor during the period of emancipation.~~

#### § 5.1-349. Severability.

If any article, section, subsection, or clause of this chapter is found by the Gun Lake Tribal Court, Gun Lake Tribal Court of Appeals, or any other court of competent jurisdiction to be inconsistent with or in violation of the ~~MBPI Tribe's~~ governing law or otherwise invalid or unenforceable, such article, section, subsection, or clause will be deemed to be severed and deleted from this chapter, which will remain in full force and effect.

#### § 5.1-3540. Word usage.

- A. In construing this chapter, the present tense includes the past and future tenses, and the future tense includes the present tense.
- B. When reference is made to any portion of this chapter, the reference will apply to all amendments made hereafter.
- C. Section headings will not be used in construing this chapter.

**§ 5.1-~~3641~~. No waiver of immunity.**

Nothing in this chapter will be construed as a waiver of the immunity of the Tribe or of any tribal entity, agency, or instrumentality from unconsented suit or administrative proceedings unless otherwise explicitly provided.

**§ 5.1-~~3742~~. When effective; amendment.**

This chapter is effective upon the date of enactment and may be amended only by duly enacted resolution of the Tribal Council.