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### TITLE 3

#### WHITE EARTH BAND OF CHIPPEWA TRIBAL JUVENILE JUSTICE CODE

#### CHAPTER 1. SHORT TITLE, PURPOSE AND DEFINITIONS

##### Sec. 3-1-1 Short Title

Title 3 shall be entitled "The Juvenile Justice Code".

##### Sec. 3-1-2 Purpose

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

1. To preserve and retain the unity of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this code;
2. To recognize that alcohol and substance abuse is a disease which is both preventable and treatable;
3. To remove the legal consequences of criminal behavior from children committing juvenile offenses and to substitute a program of supervision, care, and rehabilitation consistent with the protection of the White Earth Indian Reservation;
4. To achieve the purposes of this code in a family environment whenever possible, separating the child from the child's parent(s) only when necessary for the child's welfare or in the interests of public safety;
5. To separate clearly in the judicial process and other's affecting children under this code the juvenile offender and the family in need of services, and to provide appropriate and distinct dispositional options for treatment and rehabilitation of these children and families;

6. To provide judicial and other procedures through which the provisions of this code are executed and enforced and in which the parties are assured due process and their civil and other legal rights recognized and enforced;
7. To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community-based alternatives; and
8. To provide a forum where an Indian child charged to be delinquent or a status offender in other jurisdictions may be referred for adjudication and/or disposition, specifically to address the issues of truancy and curfew violations.

### Sec. 3-1-3 Definitions

The following definitions will apply for the purposes of this code:

1. “*Adjudicatory Hearing*” shall mean a proceeding in the juvenile court to determine whether a child has committed a specific juvenile offense or is a child whose family is in need of services as set forth in a petition.
2. “*Adult*” shall mean an individual who is eighteen (18) years of age or older (see the definitions of “*Transfer to Tribal Court*”) or otherwise emancipated by a court order.
3. “*Alcohol or Substance Abuse Emergency Shelter or Halfway House*” shall mean an appropriately licensed and supervised emergency shelter or halfway house for the care and treatment of juveniles with regard to alcohol and/or substance abuse problems.
4. “*Child*” shall mean an individual who is less than eighteen (18) years old (see the definition to “*Transfer to Tribal Court*”) and has not been emancipated by an order of a court of competent jurisdiction.
5. “*Consent Decree*” shall mean a court order which suspends a juvenile offender or family in need of services proceedings prior to adjudication and continues the child or the family under supervision under terms and conditions negotiated with the juvenile counselor and agreed to by all parties.
6. “*Counsel*” shall mean an advocate, lay advocate or attorney.

7. *“Court”* or *“Juvenile Court”* shall mean the White Earth Juvenile Court.
8. *“Curriculum Change”* shall include but not necessarily be limited to the following:
  - A. A change in a child’s instructor, if available;
  - B. A change in the scheduling of a child’s classes, if available;
  - C. Reassignment of a child into another class section, if available;
  - D. A change in the content of a child’s course of instruction, if available; and
  - E. A change in the child’s school, if available. (See Section 3-1-3 Subd. 14 the definition of *“Family in Need of Services”*).
9. *“Custodian”* shall mean a person, other than a parent or guardian, to whom legal custody of the child has been granted.
10. *“Detention”* shall mean the exercise of authority over a child by physically placing him/her in any juvenile facility designated by the court and restricting the child’s movement in that facility.
11. *“Dispositional Hearing”* shall mean a proceeding in the juvenile court to determine how to resolve a case after it has been determined at the adjudicatory hearing that the child has committed a specific juvenile offense(s) or is a child whose family is in need of services.
12. *“Domicile”* shall mean a person’s permanent home, legal home, or main residence. The domicile of a child is generally that of the custodial parent(s) or guardian. Domicile includes the intent to establish a permanent home or where the jurisdiction is established at the time of the alleged act(s).
13. *“Emergency Foster Home”* shall mean a family whose home has been licensed to accept emergency placements of children at any hour of the day or night.
14. *“Family in Need of Services”* shall mean:
  - A. A family whose child, while subject to compulsory school attendance, is habitually and without justification absent from school; or
  - B. A family wherein there is allegedly a breakdown in the parent-child relationship based on the refusal of the parent(s),

guardian, or custodian to permit the child to live with them or to supervise them or based on the child's refusal to live with his/her parent(s), guardian or custodian or to be supervised by them; or

C. A family where the conduct complained of presents a clear and substantial danger to the child's life or health and the intervention of the juvenile court is essential to provide the treatment, rehabilitation or services needed by the child or his/her family; or

1. The child or his/her family are in need of treatment, rehabilitation or services not presently being received and the intervention of the juvenile court is essential to provide this treatment, rehabilitation or services.

(See Section 3-18-1 through Sect. 3-20-9 of this code for specific "family in need of services" procedures).

15. *"Foster Home"* shall mean a family whose home has been licensed to accept placement of children under the age of eighteen (18) years.
16. *"Guardian/Custodian or Indian Custodian"* shall mean a person other than a parent, including but not limited to, grandparents or extended family members who are appointed by a court of law to have the duty and authority to provide care, shelter, and control of a child.
17. *"Group Home"* shall mean a residential detention facility, which is licensed to care for children under the age of eighteen (18) years.
18. *"He/his"* shall mean he or his and singular includes plural.
19. *"Her/She"* shall mean her or she and singular includes plural.
20. *"Indian child"* shall mean a White Earth tribal member who is an enrolled member, a descendant of an enrolled member or a descendant of a grandparent who is an enrolled member.
21. *"Indian Child Welfare"* shall mean the White Earth Band of Ojibwe human services agency that works with child neglect, dependency and abuse issues both on and off the reservation, submits recommendations to the court regarding placement, custody and other related child protection issues and can be the agency who is granted custody by the court.



22. *“Interim Care”* shall mean the status of temporary physical control of a child whose family is in need of services (see the definition of “Family in Need of Services” at Section 3-1-3, subd. 14).
23. *“Juvenile Counselor”* shall mean the juvenile counselor or the juvenile probation officer or any other appropriately titled person who performs the duties and responsibilities set forth in Section 3-6-2.
24. *“Juvenile Facility”* shall mean any juvenile facility (other than a school) that cares for juveniles or restricts their movement, including secure juvenile detention facilities, alcohol or substance abuse emergency shelter or halfway houses, foster homes, emergency foster homes, group homes, and shelter homes (see individual definitions).
25. *“Juvenile Offender”* shall mean a child who commits a juvenile offense prior to the child’s eighteenth (18<sup>th</sup>) birthday.
26. *“Juvenile Offense”* shall mean a criminal violation of the Law and Order Code of the White Earth Band of Ojibwe Indians which is committed by a person who is under the age of eighteen (18) at the time the offense was committed.
27. *“Juvenile Presenter”* shall mean the juvenile presenter or juvenile presenting officer or juvenile petitioner or any other appropriately titled person who performs the duties and responsibilities set forth in Section 3-6-3 of this code.
28. *“Juvenile Shelter Care Facility”* shall mean any juvenile facility other than a secure juvenile detention facility (see definitions of “Juvenile Facility” at Section 3-1-3, subd. 21 and “Secure Juvenile Detention Facility” at Section 3-1-3, subd. 30).
29. *“Parent”* shall include a natural or adoptive parent, but does not include persons whose parental rights have been legally terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.
30. *“Peacemaking Circle”* is a community directed process, in partnership with the tribal court, for developing consensus on an appropriate sentencing plan which address the concerns of all interested parties. Peacemaking circles use traditional circle ritual and structure to create a respectful space in which all interested community members, elders, victims, victim supporters, judge, attorney, police and court workers can speak from the heart in a shared search for understanding of the event and to identify the

steps necessary to assist in healing all affected parties and to prevent future occurrences.

31. *“Probation”* shall mean a legal status created by court order whereby a juvenile offender is permitted to remain in his/her home under the supervision of a person designated by the court. A juvenile offender on probation is subject to return to court for further proceedings in the event of his/her failure to comply with any of the prescribed conditions of probation.
32. *“Protective Supervision”* shall mean a legal status created by court order under which a juvenile offender is permitted to remain in his/her home or is placed with a relative or other suitable individual and supervision and assistance is provided by the court, a health or social services agency or some other agency designated by the court.
33. *“Restitution”* shall mean financial or other reimbursement payable by the child to the victim, and is limited to easily ascertainable damages for injury to loss of property, actual expenses incurred for medical, psychiatric and psychological treatment for injury to persons, and lost wages resulting from injury, which are a direct and proximate result of the delinquent act committed by the child. Restitution does not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses.
34. *“Secure Juvenile Detention Facility”* shall mean a facility which:
  - A. Contains locked cells or rooms which are separated by sight and sound from any adult inmates;
  - B. Restricts the movement of those placed in the locked cells or rooms; and
  - C. Complies with the other requirements of the Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. 5601 et. seq.
35. *“Shelter”* shall mean a facility, which is licensed to care for children under the age of eighteen (18) years in an unrestricted setting.
36. *“Social Compact”* realistic goals developed within the peacemaking circle that the offender could achieve. The offender must sign the social compact and achieve all goals within the social compact to complete peacemaking circle.
37. *“Transfer to Tribal Court”* shall mean the transferring of a child from the jurisdiction of juvenile court or the jurisdiction of the tribal court

according to Chapter 3 of this code which results in the termination of the juvenile court's jurisdiction over that offense.

38. *"Tribal Council"* shall mean the tribal council of the White Earth Band of Ojibwe.
39. *"Tribal Court"* shall mean the adult court for the White Earth Band of Ojibwe.

## CHAPTER 2. JURISDICTION OF THE JUVENILE COURT

### Sec. 3-2-1 Jurisdiction Over Juvenile Offenders and Families in Need of Services

The juvenile court has exclusive original jurisdiction over all proceedings established in this code in which an Indian child residing in or domiciled on the White Earth Reservation is:

1. Alleged to be a juvenile offender as defined in Section 3-1-3 of this code, unless the juvenile court transfers jurisdiction to the tribal court according to Chapter 3 of this code; or
2. Alleged to be a child whose family is in need of services as defined in Section 3-1-3 of this code.

## CHAPTER 3. TRANSFER TO TRIBAL COURT

### Sec. 3-3-1 Transfer Petition

An officer of the court may file a petition requesting the juvenile court to transfer a child to the jurisdiction of the tribal court if the child is sixteen (16) years of age or older and is alleged to have committed an act which would have been considered a serious crime if committed by an adult. Serious crime includes but is not limited to crimes such as domestic assault, assault with a weapon or any other crime which causes injury or harm to self or others.

### Sec. 3-3-2 Transfer Hearing

The juvenile court shall conduct a hearing to determine whether jurisdiction of the child should be transferred to the tribal adult court. The transfer hearing shall be held within ten (10) days of receipt of the petition by the court. Written notice of the time, place and purpose of the hearing is to be given to the child and the child's parent(s), guardian, or custodian at least three (3) days before the hearing. At the commencement of the hearing, the court shall notify the child and the child's parent(s), guardian or custodian of their rights under Chapter 7 of this code (3-7-5).

### Sec. 3-3-3 Deciding Factors

The following factors shall be considered when determined whether to transfer jurisdiction of the child to the tribal adult court:

1. The nature and seriousness of the offense with which the child is charged;
2. The nature and condition of the child, as evidenced by his/her age, mental and physical condition; and
3. The child's past record of offense, if any.

### Sec. 3-3-4 Standard of Proof in Transfer Hearing

The juvenile court may transfer jurisdiction of the child to the tribal court only if the court finds clear and convincing evidence that both of the following circumstances exist:

1. There are no reasonable prospects for rehabilitating the child through resources available to the juvenile court; and
2. The offense(s) allegedly committed by the child evidence a pattern of conduct which constitutes a substantial danger to the public.

### Sec. 3-3-5 Pre-Hearing Report in Transfer Proceedings

At least three (3) days prior to the transfer hearing, the petitioner and/or juvenile probation officer shall prepare a pre-hearing report for the juvenile court and make copies of that report available to the child's advocate, parent(s), guardian or custodian. The pre-hearing report shall address the issues described in Sections 3-3-3 and 3-3-4 above.

### Sec. 3-3-6 Written Transfer Order

A child may be transferred to the tribal court only if the juvenile court issues a written order after the conclusion of the transfer hearing which contains specific findings and reasons for the transfer in accordance with Sections 3-3-3 and 3-3-4 above. This written order terminates the jurisdiction of the juvenile court over the child with respect to the juvenile offense(s) alleged in the petition. No child shall be prosecuted in the tribal adult court for a criminal offense unless the case has been transferred to the tribal court as provided in this chapter.

## CHAPTER 4. JUVENILE COURT PROCEDURE

### Sec. 3-4-1 Non-Criminal Proceedings

No adjudication upon the status of any child in the jurisdiction of the juvenile court shall be deemed criminal or be deemed a conviction of a crime

unless the juvenile court transfer jurisdiction to the tribal (adult) court according to Chapter 3 of this code.

#### Sec. 3-4-2 Use in Other Proceedings

The adjudication, disposition, and evidence presented before the juvenile court shall be inadmissible as evidence against the child in any proceeding in another court, including the tribal court.

#### Sec. 3-4-3 Rules of Procedure

The procedures in the juvenile court shall be governed by White Earth Band of Ojibwe Rules of Procedure for the White Earth Tribal Court which are not in conflict with this code.

### CHAPTER 5. RELATIONS WITH OTHER AGENCIES

#### Sec. 3-5-1 Cooperation and Grants

The juvenile court is authorized to cooperate fully with any federal, state, tribal, county public or private agency in order to participate in any diversion, rehabilitation or training program(s) and to receive grants-in-aids to carry out the purpose of this code.

#### Sec. 3-5-2 Social Services

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

#### Sec. 3-5-3 Contracts

The juvenile court may negotiate contracts with tribal, federal or state agencies and/or departments on behalf of the tribal council for the care and placement of children whose status is adjudicated by the juvenile court.

#### Sec. 3-5-4 Transfers from Other Courts

The juvenile court may accept or decline transfers from other states or tribal courts involving alleged delinquent children or alleged status offenders for the purposes of adjudication and/or disposition

### Chapter 6. JUVENILE COURT PERSONNEL

#### Sec. 3-6-1 Juvenile Court Judge

1. Appointment. The judge(s) of the juvenile court shall be appointed or elected in the same manner as the judge(s) of the tribal court.

2. Qualifications. The general qualifications for the judge(s) of the juvenile court shall be the same as the qualifications for the judge(s) of the tribal court. The juvenile court judge shall be a licensed attorney. In addition, judge(s) of the juvenile court should have prior training and/or experience in juvenile matters.

3. Powers and Duties. In carrying out the duties and powers specifically enumerated under this code, judges of the juvenile court shall have the same duties and powers as judges of the tribal adult court, including, but not limited to, the contempt power, the power to issue arrest or custody warrants, the power to issue subpoenas, and the power to issue search warrants.

4. Disqualification or Disability. The rules on disqualification or disability of a judge of the juvenile court shall be the same as those rules that govern judges of the tribal court. A juvenile court judge must excuse himself or herself if he/she has a familial tie or significant relationship with a party or where his/her objectivity could reasonably be questioned.

#### Sec. 3-6-2 Juvenile Counselor/Juvenile Probation Officer

1. Appointment . The court shall appoint juvenile counselor(s) or juvenile probation officer(s) to carry out the duties and responsibilities set fourth in this code. The person(s) carrying out the duties and responsibilities set forth in this section may be labeled “juvenile counselors” or “juvenile probation officers” or any other title which the court finds appropriate so long as they perform the duties and responsibilities set fourth in this section.

2. Qualifications. The juvenile counselor must have an educational background and/or prior experience in the field of delivering social services to youth and must possess knowledge of the culture and community.

3. Resource Development. The juvenile counselor, in conjunction with the juvenile court and the tribal council, shall identify and develop resources on the White Earth Reservation to enhance each tribal child’s potential as a viable member of the tribal community.

4. Duties. The juvenile counselor/juvenile probation officer shall:

A. Conduct investigations as provided in this code or as directed by the court; and

- B. Provide pre-sentence and/or pre-hearing reports to the court and to the Tribal Prosecutor as provided in this code or as directed by the juvenile court; and
  - C. Conduct informal adjustments;
  - D. Provide counseling services or refer to Tribal Mental Health or other appropriate agency; and
  - E. Perform such other duties in connection with the care, custody or transportation of children as the court may require; and
  - F. Coordinate with local schools to properly address the truancy issue and provide school document to the Tribal Prosecutor and Court.
  - G. Coordinate with local services agencies, including Indian Child Welfare to address curfew or other related issues.
5. Prohibited Duties. The juvenile counselor shall not be employed as or be required to perform the duties of a Tribal Prosecutor, juvenile presenter or law enforcement official.

#### Sec. 3-6-3 Juvenile Presenter

1. Appointment. The court shall appoint juvenile presenter(s) to carry out the duties and responsibilities set fourth in this code. The person(s) carrying out the duties and responsibilities set fourth in this section may be labeled “juvenile presenters” or “juvenile presenting officers” or “juvenile petitioners” or any other title which the court finds appropriate so long as they perform the duties and responsibilities set fourth in this section.

2. Qualifications. The qualifications of juvenile presenter(s) shall be the same as the qualifications for the official who acts as the Tribal Prosecutor.

- A. Duties, The juvenile presenter shall:
- B. File petitions with court as provided in this code;
- C. Represent the White Earth Band in all proceedings under this code; and,
- D. Perform such other duties as the court may order.

#### Sec. 3-6-4 Additional Court Personnel

The court may set qualifications and appoint additional personnel of the juvenile court as guardians ad litem, court appointed special advocates (CASAs),

juvenile advocates, and/or referees whenever the court decides that it is appropriate to do so.

## Chapter 7. RIGHTS OF PARTIES IN JUVENILE PROCEEDINGS

### Sec. 3-7-1 Right Against Self-Incrimination

A child alleged to be a juvenile offender or a child whose family is in need of services shall, from the time of being taken into custody, be accorded and advised of the privilege against self-incrimination in language which a young child could understand (i.e. you understand that by telling on yourself, this could be used against you in court) and shall not be questioned without a knowledge waiver of his/her right to remain silent except to determine identity, to determine the name(s) of the child's parent(s) or legal custodian, or to conduct a medical assessment or assess treatment for alcohol or substances abuse when the child's health and well-being are in serious jeopardy. If a child is under the age of 13 years old, if at all possible, he/she must have a parent, custodian or guardian available before questioning.

### Sec. 3-7-2 Admissibility of Evidence

In a proceeding on a petition alleging that child is a juvenile offender or a child whose family is in need of services:

1. An out-of-court statement that would be inadmissible in a criminal matter in tribal court shall not be received in evidence;
2. Evidence illegally seized or obtained shall not be received in evidence to establish the allegation of a petition;
3. The statements of a child made while in custody to mental health professional shall not be used against the child in determining the truth of allegations in the petition;
4. A valid out-of-court admission or confession by the child is sufficient to support a finding that the committed acts alleged in the petition and should be, if possible, corroborated by other evidence.
5. Neither the fact that the child has at any time been a party to a family in need of services proceeding nor any information obtained during the pendency of such proceedings shall be received into evidence.

### Sec. 3-7-3 Fingerprinting and Photographs

A child in custody shall not be fingerprinted nor photographed for criminal identification purpose except by order of the juvenile court. If an order of the



juvenile court is given, the fingerprints or photographs shall be used only as specified by the court.

#### Sec. 3-7-4 Right to Retain Counsel

In juvenile offender and family in need of services cases, the child and his parent(s), guardian or custodian shall be advised by the court and/or its representative that the child may be represented by counsel at all stages of the proceedings. If counsel is not retained for the child, or if it does not appear that counsel will be retained, the court shall appoint Anishinabe Legal Services unless Anishinabe Legal Services has a conflict of interest for their firm or any another valid reason or the court may appoint another tribally licensed attorney/advocate for the child unless there is a conflict of interest for that attorney/advocate.

#### Sec. 3-7-5 Explanation of Rights

At his/her first appearance before the juvenile court and at each subsequent appearance before the court, the child alleged to be a juvenile offender or a child whose family is in need of services and the child parent(s), guardian or custodian shall be informed by the court of the following:

1. The allegations against him/her;
2. The right to an advocate or attorney;
3. The right to testify or remain silent and that any statement made by him/her may be used against him/her.
4. The right to cross-examine witnesses;
5. The right to subpoena witnesses on his/her behalf and to introduce evidence on his/her own behalf; and
6. The right to a court trial if requested by the juvenile.
7. The possible consequence if the allegations in the petition are found to be true.

### Chapter 8. JUVENILE CURFEW AND TRUANCY

#### Sec. 3-8-1 Curfew Imposed

It shall be unlawful for any minor person seventeen (17) years of age and under to loiter, loaf, idle, or be on or present in any public streets, highway, roads, alleys, sidewalks, parks, playgrounds, or other public buildings, places of amusement, entertainment, or private premises other than upon where his/her usual place of residence is located without the knowledge, consent, and approval of the owner or person in charge of, or responsible for, said private property within the exterior boundaries of the White Earth Band of Ojibwe, where the tribal community which opts to enforce the curfew law is situated, during the hours and periods of time as hereinafter established. It shall also be unlawful for any minor

person seventeen (17) years of age and under to drive a vehicle without a responsible adult present in the vehicle.

- (a) Between the hours 10:00 p.m. and 5:00 a.m. on the following days of: every Sunday, Monday, Tuesday, Wednesday, and Thursday night between "Labor Day" of each year, except "Labor Day" and the first day of June of each year, except that when there are pre-announced school or tribally-endorsed activities on said nights the hours shall be between 11:00 p.m. and 5:00 a.m. of the following day;
- (b) Between the hours of 11:00 p.m. and 5:00 a.m. of the following day on every Friday and Saturday night between "Labor Day" of each year, exclusive of "Labor Day" and the first day of June of each year.
- (c) Between the hours of 11:00 p.m. and 5:00 a.m. of the following day on every Sunday, Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday nights during the period of the time between the first day of June of each year, including said day, and "Labor Day" of each year and all minors shall be supervised by responsible adults at every tribal activity.

#### Sec. 3-8-2 Exception

The provisions of Section 1 shall not apply to any minor person age seventeen (17) years and under accompanied by his/her responsible parent, guardian, or other adult person having the care and custody of the minor person(s), to a minor person who is upon an emergency errand, or other legitimate business directed by his/her responsible parent, guardian, or other adult person having the custody and care of the minor person, or where the presence of said minor person in said place or places is connected with and required by some legitimate business trade, profession or occupation in which said minor person is permitted by law to be engaged.

#### Sec. 3-8-3 Responsibility of Parents, etc.

It shall be unlawful for any parent, guardian or other persons having the unlawful care, custody or control of any minor person(s) under the age of seventeen (17) years to allow or permit said minor person(s) to violate the provisions of this law.

#### Sec. 3-8-4 Responsibility of Other Person

- (a) It shall be unlawful for any person, firm or corporation in charge of any place of amusement, entertainment or refreshment, any other

place of business or any other home or place to permit any minor person age seventeen (17) years and under to be on or in such place during the hours prohibited by this law except as provided in Section 2 of this law.

- (b) This law shall not be constructed as permitting the presence at any time of any minor person the age of seventeen (17) years and under in any place where his /her presence is now prohibited by any existing law or ordinance.

#### Sec. 3-8-5 Penalties

Any person, firm or corporation violating any provisions of the law shall be guilty of a misdemeanor and, upon conviction, be punished by a fine not exceeding one hundred dollars (\$100.00).

#### Sec. 3-8-6 Truancy Imposed

The program in this chapter are designated to provided a continuum of intervention and services to support families and children in keeping children in school and combating truancy and educational neglect. School districts, attorneys, Indian Child Welfare and law enforcement may establish the programs and coordinate them with other community-based truancy services in order to provide the necessary and most effective intervention for children and their families. This continuum of intervention and services involves progressively intrusive intervention, beginning with strong service-oriented efforts at the school and community level and involving the court's authority only when necessary.

#### Sec. 3-8-7 Truant and Educational Neglect

1. *"Truant"* means a child who is absent from instruction in a school, without a valid excuse, and within a quarter of a regular school year for:

- (a) Three days if the child is in elementary school; or
- (b) Three days if the child is in middle school, junior high school, or high school.

2. *"Habitual Truant"* means a child who is absent from instruction in a school, without valid excuse, and within a quarter of a regular school year for:

- (a) Seven days if the child is in elementary, middle school, junior high school or high school.

Nothing in this section shall prevent a school district from notifying a truant child's parent, legal guardian and Indian Child Welfare of the child's truancy or

otherwise addressing a child's attendance problems prior to the child becoming a continuing or habitual truant.

3. Educational Neglect means a parent, guardian or custodian who fails to send their child(ren) to school or fails to insure the child attends school pursuant to the definition of truant as referenced above.

4. The school where the child is enrolled shall promptly notify the juvenile counselor and/or the juvenile presenter, within seven business (7) days after the child misses three (3) consecutive school days or promptly notify the school after the child misses seven (7) days as a habitual truant. The school shall provide written documentation to the juvenile presenter, tribal court and juvenile counselor which indicates the efforts the school took to work with the child and/or parents regarding the truancy.

#### Sec. 3-8-8 Notice to Parent or Guardian when Child is a Continuing Truant

Upon a child's initial classification as a continuing truant, the school attendance officer or other designated school official shall notify the child's parent, legal guardian, and Indian Child Welfare, by first-class mail or other reasonable means, of the following:

- (a) that the child is truant;
- (b) that the parent or guardian should notify the school if there is a valid excuse for the child's absence.
- (c) that the parent or guardian is obligated to compel the attendance of the child at school and parents or guardians who fails to meet this obligation may be subject to prosecution;
- (d) that this notification serves as the notification;
- (e) that alternatives educational programs and services may be available in the district;
- (f) that the parent of guardian has the right to meet with appropriate school personnel to discuss solutions to the child's truancy;
- (g) that if child continues to be truant, the parent and child may be subject to juvenile court proceedings;
- (h) that if the child is subject to juvenile court proceedings, the child maybe subject to suspension, restrictions, or delay of the child's driving license privileges and/or fines;

- (i) that it is recommended that the parent or guardian accompany the child to school and attend classes with child for one day.

## CHAPTER 9. ALLEGED JUVENILE OFFENDER – TAKING INTO CUSTODY

### Sec. 3-9-1 Taking a Child into Custody

1. A law enforcement officer may take a child into custody when:
  - A. The child commits a juvenile offense in the presence of the officer; or
  - B. The officer has a reasonable and/or corroborated direct or testimonial evidence to believe a juvenile offense has been committed by the child being detained; or
  - C. An appropriate custody order or warrant has been issued by the court authorizing the taking of a particular child.
2. A law enforcement officer must immediately notify Indian Child Welfare when taking a child into custody and must again notify Indian Child Welfare within twenty four (24) hours of taking a child into custody.

### Sec. 3-9-2 Provision of Rights

At the time the child is taken into custody as an alleged juvenile offender, the arresting officer shall give the following warning prior to any questioning:

1. The child has a right to remain silent;
2. Anything the child says can be used against the child in court;
3. The child has a right to the presence of his/her parent(s), guardian, or custodian and/or counsel during questioning, and;
4. The child has a right to an advocate or attorney;
5. The child has a right to a hearing before a Judge;
6. The child has a right to present witnesses on his/her own behalf and to cross-examine witnesses against him/her.

### Sec. 3-9-3 Release or Delivery from Custody

A law enforcement officer taking a child into custody shall give the warnings listed in Section 3-9-2 to any child he/she takes into custody prior to questioning and then shall do one of the following:

1. Release the child to the child's parent(s), guardian or custodian and issue verbal counsel or warning as may be appropriate; or
2. Release the child to a relative or other responsible adult tribal member if the child's parent(s), guardian or custodian is absent; or
3. Deliver the child to the juvenile counselor or to a juvenile facility or other appropriate placement as designated by the court, or to a medical facility if the child is believed to need prompt medical treatment or is under the influence of alcohol or other chemical substances.

#### Sec. 3-9-4 Review by Juvenile Counselor or Juvenile Facility

The juvenile counselor or juvenile official at the juvenile facility (as a designated by the court) shall, immediately upon delivery of the child for custody, review the need for continued custody and shall release the child to his/her parent(s), guardian or custodian in order to appear at the hearing on a date to be set by the court, unless:

1. The act is serious enough to warrant detention and;
2. There is probable cause to believe the child has committed the offense(s) alleged; and
3. There is reasonable cause to believe the child will run away so that he/she will be unavailable for further proceedings; or
4. There is reasonable cause to believe that the child will commit a serious act causing damage to person or property;
5. There is reasonable cause to believe that the child may hurt himself or herself.

#### Sec. 3-9-5 Notification of Family

If a child is taken into custody and not released to his/her parent(s), guardian or custodian, the person taking the child into custody shall immediately make every effort possible to give personal and written notice to the child's parent(s), guardian or custodian. All reasonable efforts shall be made to advise the parent(s), guardian or custodian of the reason for taking the child into custody and the place of continued custody. Such reasonable efforts shall include telephone and personal contacts at the home or place of employment or other

locations where the person is known to frequent. If notification cannot be provided to the child's parent(s), guardian or custodian, the written notice shall be given to a member of the extended family of the parent(s), guardian or custodian and to the child's extended family. The written notice shall contain an address, telephone number, and contact person for the parent to contact. The person taking the child into custody shall insure the parent, guardian, custodian and Indian Child Welfare is notified and shall show proof of notification by certified mail and/or affidavit of personal service.

#### Sec. 3-9-6 Criteria for Selecting Juvenile Facility

If the juvenile counselor or juvenile official at the juvenile facility (as designated by the court), in collaboration with Indian Child Welfare, determines that there is a need for continued custody of the child in accordance with section 3-9-4 of this code, then the following criteria shall be used to determine the appropriate juvenile facility for the child:

1. A child may be detained in a secure juvenile detention facility (as defined in Section 3-1-3 of this code) as designated by the court only if one or more of the following conditions are met:
  - A. The child is a fugitive from another jurisdiction wanted for a felony level offense; or
  - B. The child is uncontrollable and has committed a physical assault on the arresting officer or on other security personnel or other personnel while resisting arrest or detention; or
  - C. The child is already detained or on conditioned release for another juvenile offense; or
  - D. The child has a demonstrable recent record of willful failures to appear at proceedings of the juvenile court; or
  - E. The child has made a serious escape attempt; or
  - F. The child requests in writing or orally requests with a taped statement that he/she be given protection by being confined in a secure confinement area and there is a present and immediate threat of serious physical injury to the child including but not limited to attempt suicide or is a danger to himself/herself. The child may be referred to the White Earth Suicide Intervention Team, if applicable.

2. A child may be housed in a juvenile shelter care facility (as defined in Section 3-1-3 of this code) as designated by the court only if one of the following conditions exists:

- A. One of the conditions described in Section 3-9-6(1) above exists;  
or
- B. The child is unwilling to return home or to the home of an extended family member; or
- C. The child's parent(s), guardian, custodian, or an extended family member is unavailable, unwilling, or unable to permit the child to return to his/her home;
- D. There is evident and immediate physical danger to the child in returning home, and all extended family members are unavailable, unwilling, or unable to accept responsibility for temporary care and custody of the child.

3. A child may be referred to an alcohol or substance abuse emergency shelter or halfway house (as defined in Section 3-1-3 of this code) if it is determined that there is a need for continued custody of the child in accordance with Section 3-9-4 of this code and:

- A. The child has been arrested or detained for a juvenile offense relating to alcohol or substance abuse;
- B. There is space available in an alcohol or substance abuse emergency shelter or halfway house designated by the court; and
- C. The child is not deemed to be a danger to himself/herself or others.

## CHAPTER 10. ALLEGED JUVENILE OFFENDER – DETENTION HEARING

### Sec. 3-10-1 Requirement of Detention Hearing

Where a child who has been taken into custody is not released, a detention hearing shall be convened by the court within forty-eight (48) hours, exclusive of holidays and weekends, of the child's initial detention under Chapter 8 of this code.

### Sec. 3-10-2 Purpose of Detention Hearing

The purpose of the detention hearing is to determine:



1. Whether probable cause exists to believe the child committed the alleged juvenile offense; and
2. Whether continued detention is necessary pending further proceedings.

#### Sec. 3-10-3 Notice of Detention Hearing

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

1. The name of the court;
2. The title of the proceedings;
3. A brief statement of the juvenile offense the child is alleged to have committed; and
4. The date, time, and place of the detention hearing.

#### Sec. 3-10-4 Detention hearing procedure

Detention hearings shall be conducted by the juvenile court separate from other proceedings. At the commencement of the detention hearing, the court shall notify the child and the child's parent(s), guardian or custodian of their rights under Chapter 7 of this code. The rights under Chapter 7 are: The right against self-incrimination, the right to counsel, the admissibility of evidence, fingerprint and photograph issues, the right to a lawyer, the right to subpoena witnesses, the right to cross-examine witnesses, the right to remain silent and the right to a court trial. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, and other persons requested by the parties or the court shall be admitted.

#### Sec. 3-10-5 Standards to be considered at Detention Hearing

The court shall issue a written finding stating the reasons for release or continued detention criteria set forth in Sections 3-10-4 and 3-10-6 of this code.

#### Sec. 3-10-6 Finding at Detention Hearing

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

#### Sec. 3-10-7 Rehearing the Detention Matter

If the child is not released at the detention hearing, and the child's parent(s), guardian, or custodian was not notified of the hearing and did not

appear or waive appearance at the hearing, the court shall rehear the detention matter without necessary delay upon the filing of a motion for rehearing and a declaration stating the relevant facts.

## CHAPTER 11. JUVENILE OFFENDER - INITIATION OF PROCEEDINGS

### Sec. 3-11-1 Investigation by the Juvenile Counselor/Probation Officer

The juvenile counselor shall make an investigation within twenty-four (24) hours of the detention hearing or the release of the child to his/her parent(s), guardian or custodian, to determine whether the interests of the child and the public require that further action be taken. Upon the basis of his/her investigations, the juvenile counselor/Probation Officer shall:

1. Recommend that no further action be taken; or
2. Suggest to the child and the child's parent(s), guardian or custodian that they appear for an informal adjustment conference under Sections 3-11-2 and 3-11-3 of this code; or
3. Request the juvenile presenter to begin proceedings to transfer jurisdiction of the child to the tribal adult court under Chapter 3 of this code; or
4. Recommend that the juvenile presenter file a petition under Section 3-11-4 of this code. The petition shall be filed within forty-eight (48) hours if the child is in custody. If the child has been previously released to his/her parent(s), guardian, custodian, relative or responsible adult, the petition shall be filed within ten business (10) days.

### Sec. 3-11-2 Informal Adjustment

1. During the course of the preliminary investigations to determine what further action shall be taken, the juvenile counselor shall confer with the child and the child's parent(s), guardian or custodian for the purpose of effecting adjustments or agreements that make the filing of the petition unnecessary.

2. The juvenile counselor/Probation Officer shall consider the following factors in determining whether to proceed informally or to file a petition:

- A. Nature and seriousness of the offense;
- B. Previous number of contacts with the police, juvenile counselor or the court;
- C. Age and maturity of the child;
- D. Attitude of the child regarding the offense;

- E. Willingness of the child regarding the offense;
- F. Participation and input from the child's parent(s), guardian, custodian and/or Indian Child Welfare.

### Sec. 3-11-3 Informal Conference

1. After conducting a preliminary investigation, the juvenile counselor/Probation Officer shall hold an informal conference with the child and the child's parent(s), guardian or custodian to discuss alternative courses of action in the particular case.

2. The juvenile counselor shall inform the child, the child's parent(s), guardian or custodian of their basic rights under Chapter 7 of this code. Statements made by the child at the informal conference may or may not be used against the child in determining the truth of the allegations in the petition. The court shall make the determination whether or not the statement(s) are admissible.

3. At the informal conference, upon the basis of the information obtained during the preliminary investigation, the juvenile counselor may enter into a written agreement with the child and the child's parent(s), guardian or custodian specifying particular conditions to be observed during an informal adjustment period, not to exceed six (6) months. The child and the child's parent(s), guardian or custodian shall enter into the agreement with the knowledge that consent is voluntary and that they may terminate the adjustment process at any time and petition the court for a hearing in the case.

4. The child shall be permitted to be represented by counsel at the informal conference.

5. If the child does not desire to participate voluntarily in a diversion program, the juvenile counselor shall recommend that the juvenile presenter file a petition under Section 3-11-4 of this code.

6. Upon the successful completion of the informal adjustment agreement, the case shall be closed and no further action taken in the case.

7. If the child fails to successfully complete the terms of the informal adjustment agreement, the juvenile counselor may recommend that a petition be filed in the case under Section 3-11-4 of this code.

### Sec. 3-11-4 Filing and Content of Petition

Formal juvenile offender proceedings shall be instituted by a petition filed by the juvenile presenter on behalf of the White Earth Band and in the interests

of the child. The petition shall be entitled, "*In the matter of* \_\_\_\_\_, *a child*" and shall set forth:

1. The name, birth date, residence, and tribal affiliation of the child;
2. The names and residences of the child's parent(s), guardian or custodian;
3. A citation of the specific section(s) of this code which give the court jurisdiction over the proceedings;
4. A citation of the criminal statute or other law or ordinance which the child is alleged to have violated;
5. A plain and concise statement of facts upon which the allegations are based, including the date, time and location at which the alleged facts which occurred including direct or testimonial evidence.
6. Whether the child is in custody and, if so, the place of detention and time he/she was taken into custody.

#### Sec. 3-11-5 Issuance of Summons

After a juvenile offender petition has been filed, the court shall direct the issuance of summons to:

1. The child;
2. The child's parent(s), guardian or custodian;
3. The child's counsel;
4. Appropriate medical and/or alcohol rehabilitation experts, and;
5. Any other person or agency which may include Indian Child Welfare or any other person(s) the court deems necessary for the proceedings.

#### Sec. 3-11-6 Content of the Summons

The summons shall contain the name of the court, the title of the proceedings, and the date, time, and place of the hearing. The summons shall also advise the parties of their applicable rights under Chapter 7 of this code. A copy of the petition shall be attached to the summons.

#### Sec. 3-11-7 Service of the Summons

The summons shall be served upon the parties at least five (5) days prior to the hearing. The summons shall be delivered personally by a law enforcement

official or appointee of the court. If the summons cannot be delivered personally, the court may deliver it by U.S. mail postage prepaid. If the summons cannot be delivered by U.S. mail, it may be served by publication in the *Anishinaabeg Today* or other local newspaper. A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

## CHAPTER 12. JUVENILE OFFENDER – CONSENT DECREE

### Sec. 3-12-1 Availability of Consent Decree

At any time after the filing of a juvenile offender petition and before the entry of a judgment, the court may, on motion of the juvenile presenter or that of counsel for the child, suspend the proceedings and continue the child under supervision in his/her own home under terms and conditions negotiated with the juvenile counselor and agreed to by all the parties affected. The court's order continuing the child under this section shall be known as a consent decree.

### Sec. 3-12-2 Objection to Consent Decree

If the child objects to a consent decree, the court shall proceed to findings, adjudication and disposition of the case. If the child does not object, but an objection is made by the juvenile presenter after consultation with the juvenile counselor, the court shall, after considering the objections and the reasons given, proceed to determine whether it is appropriate to enter a consent decree and may, in its discretion, enter the consent decree.

### Sec. 3-12-3 Duration of Consent Decree

A consent decree shall remain in force for six (6) months unless the child is discharged sooner by the juvenile counselor. If the child does not object, but an objection is made by the juvenile presenter after consultation with the juvenile counselor, the court shall, after considering the objections and the reasons given, proceed to determine whether it is appropriate to enter a consent decree and may, in its discretion, enter the consent decree.

### Sec. 3-12-4 Failure to Fulfill Terms and Conditions

If, either prior to a discharge by the juvenile counselor or expiration of the consent decree, the child fails to fulfill the terms of the decree, the juvenile presenter may file a petition to revoke the consent decree. Proceedings on the petition shall be conducted according to Chapter 13 of this code. If the child is found to have violated the terms of the consent decree, the court may:

1. Extend the period of the consent decree; or

2. Make any other disposition which would have been appropriate in the original proceeding.

#### Sec. 3-12-5 New Juvenile Offense Complaint

If, either prior to discharge or expiration of the consent decree, a new juvenile offender complaint is filed against the child or the child has failed to meet the terms and conditions of the decree, and the juvenile offender has conducted a preliminary inquiry and authorized the filing of a petition upon a finding that informal adjustment is not in the best interest of the child and the public, the juvenile presenter may:

1. File a petition to revoke the consent decree in accordance with Section 3-12-4 of this code; or
2. File a petition on the basis of the new complaint which has been filed against the child.

#### Sec. 3-12-6 Dismissal of Petition

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

### CHAPTER 12A. PEACEMAKING CIRCLE

#### Sec. 12-A-1 Application Process

1. A guilty plea shall be entered by offender and accepted by the Tribal Court judge.
2. A referral from the Tribal Court will be made to the juvenile counselor. The offender will be contacted by the juvenile counselor with application materials. However, the offender will have the privilege to choose not to participate in the program at the time of the application process. If the offender chooses not to participate in the peacemaking circle, the offense will be heard before the tribal court pursuant to the adjudicatory process.
3. The offender has seven (7) working days to file application with the juvenile counselor.

4. The juvenile counselor shall contact community members, peacemaking process committee, and the offender within seven (7) working days to schedule an interview circle. If the victim indicates an interest in participating, he/she will be notified.
5. During the interview, circle members will settle on one of two outcomes:
  - A. Accept: Peacemaking circle members agree to work with the offender in the circle process. The offender and circle members create a social compact. The Circle may begin regular meetings with the offender.
  - B. Reject: Peacemaking circle members decide not to work with the offender in circle process at the current moment. The reasons for rejection are reviewed and offender is told what criteria he or she must meet to reapply. The offender will return to tribal court for sentencing/disposition by judge if he or she chooses not to reapply.

#### Sec. 12-A-2 Schedule

1. The Peacemaking Circle shall be scheduled to occur within seven (7) working days. If the juvenile counselor, judge, attorney, offenders, or victim are unable to calendar a scheduled date, the peacemaking circle will be rescheduled. Those members who would like to attend but are unable to attend the scheduled date may choose to give input in one or more following ways:
  - a. Provide their input to the peacemaking circle in writing.
  - b. Send another person to represent their input to the peacemaking circle.
  - c. Request that the juvenile counselor or a peacemaking circle member to represent their input at circle.

#### Sec. 3-12-A-3 Sentence Agreement

1. Attendance of all key members of the circle should be in attendance during the sentencing agreement.
2. During the peacemaking circle, a group consensus is reached. A sentencing circle agreement is adopted by peacemaking circle.
3. The sentence agreement is presented to the judge for approval.

4. The following information will be provided to the judge before acceptance of the sentence agreement.
  - a. The Sentence Agreement
  - b. The number of peacemaking circle meetings
  - c. The number of hours spent meeting
  - d. The number of community members involved in case

## CHAPTER 13. ALLEGED JUVENILE OFFENDER – ADJUDICATION PROCEEDINGS

### Sec. 3-13-1 Purpose and Conduct of Adjudicatory Hearing

Hearings on juvenile offender petitions shall be conducted by the juvenile court separate from other proceedings. The court shall conduct the adjudicatory hearing for the sole purpose of determining whether the child has committed a juvenile offense. At the adjudicatory hearing, the child and the child's parent(s), guardian or custodian shall have all the applicable rights listed in Chapter 7 of this code. The general public shall be excluded from the proceedings. Only the parties, their counsel, the juvenile presenter, witnesses and other persons requested by the parties or court shall be admitted.

### Sec. 3-13-2 Time limitations on Adjudicatory Hearings

If the child remains in custody, the adjudicatory hearing shall be held within ten (10) business days of receipt of the juvenile offender petition by the juvenile court. If the child is released from custody or was not taken into custody, then the adjudicatory hearing shall be held within thirty (30) days of receipt of the juvenile offender petition by the juvenile court.

### Sec. 3-13-3 Notice of Hearing

Written notice of the adjudicatory hearing shall be given to the child and the child's parent(s), guardian or custodian, the Tribal Prosecutor, the child's counsel, Indian Child Welfare and any other person the court deems necessary for the hearing at least five (5) days prior to the hearing.

### Sec. 3-13-4 Denial of Allegations

If the allegations in the juvenile offender petition are denied, the juvenile court shall set a date to hear evidence on the petition.

### Sec. 3-13-5 Admission of Allegations



If the child admits the allegations of the petition, the juvenile court shall consider a disposition only after finding that:

1. The child fully understands his/her rights under Chapter 7 of this code and fully understands the consequences of his/her admission;
2. The child voluntarily, intelligently, and knowingly admits all facts necessary to constitute a basis for action by the juvenile court; and
3. The child has not, in his/her statements on the allegations, set forth facts, which if found to be true, would be a defense to the allegations.

#### Sec. 3-13-6 Juvenile Offender Finding After Admission

If the Court finds that the child has validly admitted the allegations contained in the petition, the court shall make and record its finding and schedule a dispositional hearing in accordance with Chapter 15 of this code. Additionally, the court shall specify in writing whether the child is to be continued in out-of-home placement pending the dispositional hearing.

#### Sec. 3-13-7 Juvenile Offender Finding After Hearing

If the court finds on the basis of proof beyond a reasonable doubt that the allegations contained in the petition are true, the court shall make and record its finding and schedule a dispositional hearing in accordance with Chapter 15 of this code. Additionally, the court shall specify in writing whether the child is to be continued in out-of-home placement pending the dispositional hearing.

#### Sec. 3-13-8 Dismissal of Petition

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

### CHAPTER 14. JUVENILE OFFENDER – PREDISPOSITION STUDIES, REPORTS AND EXAMINATIONS

#### Sec. 3-14-1 Predisposition Study and Report

The court shall direct the juvenile counselor to prepare a written predisposition study and report for the court concerning the child, the child's family, environment and any other matter relevant to the need for treatment or other appropriate disposition of the case when:

1. The child has been adjudicated as a juvenile offender; or
2. The notice of intent to admit the allegations of the petition has been filed.

#### Sec. 3-14-2 Contents of Predisposition Study and Report

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

#### Sec. 3-14-3 Medical Assessment and Treatment for Alcohol or Substance Abuse

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

#### Sec. 3-14-4 Pre-Adjudication Examination of an Emotionally or Developmentally Disabled Child

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

#### Sec. 3-14-5 Pre-Disposition Examinations

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

#### Sec. 3-14-6 Transfer for Diagnosis

The court may order that a child adjudicated as a juvenile offender be transferred to an appropriate facility for a period of not more than sixty (60) days for purposes of diagnosis with direction that the court and the juvenile presenter be given a written report at the end of that period indicating the disposition which appears most suitable.

#### Sec. 3-14-7 Submission of Reports

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

### CHAPTER 15. JUVENILE OFFENDER – DISPOSITION PROCEEDINGS

#### Sec. 3-15-1 Purpose and Conduct of Dispositional Hearing

Dispositional hearings shall be conducted by the juvenile court separate from other proceedings. The court shall conduct the dispositional hearing to determine how to resolve a case after it has been determined at the adjudicatory hearing that the child has committed a specific offense. The court shall make and record its dispositional order in accordance with Chapter 15 of this code. At the dispositional hearing, the child and the child's parent(s), guardian or custodian shall have the applicable rights listed in Chapter 7 of this code. The public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, and persons requested by the parties or the court shall be admitted.

#### Sec. 3-15-2 Time Limitations on Dispositional Hearings

If the child remains in custody, the dispositional hearing shall be held within ten business (10) days after the adjudicatory hearing. If the child is released from custody or was not taken into custody, then the dispositional hearing shall be held within thirty (30) days after the adjudicatory hearing.

#### Sec. 3-15-3 Notice of Dispositional Hearing

Written notice of the dispositional hearing shall be given to the child and the child's parent(s), guardian or custodian, the child's counsel, Indian Child Welfare, the Juvenile Presenter and any other person the court deems necessary for the hearing at least five (5) days prior to the hearing.

#### Sec. 3-15-4 Evidence and Reports

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

### Sec. 3-15-5 Disposition Alternatives

If the child is found by the court to be a juvenile offender, the court may make and record any of the following orders of disposition for the child's supervision, care and rehabilitation;

1. Permit the child to remain with his/her parent(s), guardian or custodian subject to such conditions and limitations as the court may prescribe;
2. Place the child in legal custody of a relative or other suitable person, subject to such conditions and limitations as the court may prescribe;
3. Order the child to pay restitution as defined in the definitions section.
4. Place the child under protective supervision as defined in the definitions section under such limitations as the court may prescribe;
5. Place the child on probation as defined in the definition section under such limitations and conditions as the court may prescribe;
6. Place the child in a facility designated by the court, including alcohol or substance abuse emergency shelter or halfway house, emergency foster home, foster home, group home, shelter home or secure juvenile detention facility as defined in the definition section.
7. Order the child to undergo a sentencing circle format prior to disposition which involves community members involved in the sentencing process.

## CHAPTER 16. JUVENILE OFFENDER – REVIEW, MODIFICATION, REVOCATION, EXTENSION OR TERMINATION OF DISPOSITIONAL ORDERS

### Sec. 3-16-1 Mandatory Review of Dispositional Order

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

### Sec. 3-16-2 Modification, Revocation or Extension of Dispositional Order

The court may hold a hearing to modify, revoke or extend a dispositional order at any time upon the motion of:

1. The child;
2. The child's parent(s), guardian or custodian;
3. The child's counsel;
4. The juvenile counselor;
5. The juvenile presenter/Tribal Prosecutor;
6. The institution, agency or person vested with the legal custody of the child or responsibility for protective supervision; or
7. The court on its own motion.

### Sec. 3-16-3 Hearing to Modify, Revoke or Extend Dispositional Order

A hearing to modify, revoke or extend the dispositional order shall be conducted according to Sections 3-16-1, Sec. 3-16-3, and Sec. 3-16-5 of this code.

### Sec. 3-16-4 Automatic Termination of Dispositional Order

When the child reaches eighteen (18) years of age, all dispositional orders shall automatically terminate, unless the dispositional order was made within one (1) year of the child's eighteenth (18<sup>th</sup>) birthday or after the child has reached eighteen years of age, in which case the dispositional order may not continue for more than one (1) year unless the child is deemed vulnerable or mentally unstable by the Court and the Court may extend the courts' jurisdiction until the child reaches 21 years of age. The records concerning the child shall be destroyed according to Sec. 3-21-3 of this code.

## CHAPTER 17. FAMILY IN NEED OF SERVICES - INTERIM CARE

### Sec. 3-17-1 Limitation on Taking Into Custody

No child whose family is the subject of a proceeding alleging that the family is in need of services (as defined in Section 3-1-3 of this code, this means

where a child is truant, there is a break-down in the family relationship, there is a substantial danger to the child's life or health and the child needs appropriate treatment and/or services) may be taken into custody unless such taking into custody is in accordance with the provision for interim care. (See definition in Sec. 3-1-3 of this code which means the status of temporary physical control of a child whose family is in need of services) set forth in Sections 3-17-1 through 3-17-4 of this code which means the court may take a child back into custody through a motion and only if warranted.

#### Sec. 3-17-2 Interim Care Without Court Order

A child may be taken into interim care by a law enforcement officer without order of the court only when:

1. The officer has reasonable grounds to believe that the child is in circumstances which constitute a substantial danger to the child's physical safety; or
2. An agency legally charged with the supervision of the child has notified a law enforcement agency that the child has run away from placement ordered by the court under Chapter 20 of this code.

#### Sec. 3-17-3 Procedure for Interim Care

A law enforcement official taking a child into custody under the interim care provisions of this code shall immediately:

1. Inform the child of the reasons for the custody;
2. Contact the juvenile counselor who shall designate placement of the child in an appropriate juvenile shelter care facility as designated by the court;
3. Take the child to the placement specified by the juvenile counselor, or in the event of the unavailability of a juvenile counselor, to an appropriate juvenile shelter care facility as designated by the court;
4. Inform the child's family in accordance with Section 3-17-4 of this Code; and
5. Inform Indian Child Welfare.

#### Sec. 3-17-4 Notification of Family

The law enforcement officer or the juvenile counselor shall immediately notify the child's parent(s), guardian, custodian and Indian Child Welfare of the

child's whereabouts, the reasons for taking the child into custody, and the name and telephone number of the juvenile counselor who has been contacted. Efforts to notify the child's parent(s), guardian or custodian shall include telephone and personal contacts at the home or place of employment or other locations where the person is known to frequent with regularity. If notification cannot be provided to the child's parent(s) or custodian, the notice shall be given to a member of the extended family of the parent(s), guardian or custodian and to the child's extended family. The law enforcement officer or the juvenile counselor shall insure the parent, custodian, guardian and Indian Child Welfare are notified and shall present documented proof they have notified them via certified mail and/or affidavit of personal service.

#### Sec. 3-17-5 Time limitation on Interim Care

Under no circumstances shall any child who is taken into interim care under Sec. 3-17-2 of this code be held involuntarily for more than forty-eight (48) hours.

#### Sec. 3-17-6 Restrictions on Placement

A child taken into interim care shall not be placed in a jail or other facility intended or used for the incarceration of adults charged or convicted of criminal offenses. If a child taken into interim care is placed in a facility used for the detention of juvenile offenders or alleged juvenile offenders, he/she must be detained in a room separate from the alleged juvenile offenders.

#### Sec. 3-17-7 Restriction on Transportation

A child taken into interim care shall not be placed or transported in any police or other vehicle which at the same time contains an adult under arrest, unless this section cannot be complied with due to circumstances in which any delay in transporting the child to an appropriate juvenile shelter care facility would be likely to result in substantial danger to the child's physical safety. Said circumstances shall be described in writing to the supervisor of the driver of the vehicle within forty-eight (48) hours after any transportation of a child with an adult under arrest.

#### Sec. 3-17-8 Voluntary Service

The juvenile counselor shall offer and encourage the child and the child's family, guardian or custodian to voluntarily accept social services.

#### Sec. 3-17-9 Voluntary Return Home

If a child has been taken into interim care under the provisions of Sec. 3-17-2 of this code and the juvenile counselor and the child's parent(s), guardian or

custodian agrees to the child's return home, the child shall be returned home as soon as practicable by the child's parent(s), guardian or custodian or as arranged by the juvenile counselor.

#### Sec. 3-17-10 Shelter and Family Services Needs Assessment

If the child refuses to return home and if no other living arrangements agreeable to the child and the child's parent(s), guardian or custodian can be made, a juvenile counselor or Indian Child Welfare shall offer the child shelter in an appropriate juvenile shelter care facility as designated by the court which is located as close as possible to the residence of the child's parent(s), guardian or custodian. The juvenile counselor or Indian Child Welfare also shall refer the child and his/her family to an appropriate social services agency for a family services needs assessment.

### CHAPTER 18. FAMILY IN NEED OF SERVICES – INITIATION OF PROCEEDINGS

#### Sec. 3-18-1 Who May Submit Requests

Requests stating that a family is in need of services may be submitted by the child; the child's parent(s), guardian, custodian, a school, an appropriate social services agency including Indian Child Welfare; and/or the juvenile counselor. A request stating that a child is habitually truant and without justification absent and/or tardy from school and/or has demonstrated incorrigibility at home and/or school may also be submitted by an authorized representative of a local school board or governing authority of a private school but only if the request is accompanied by a declaration in which the authorized representative swears that the school has complied with each of the steps set forth in Section 3-18-7 of this code.

#### Sec. 3-18-2 Referral of Requests to Juvenile Counselor

Requests stating that a family is in need of services or the child violated a curfew law or other law of the Tribe, shall be referred to the juvenile counselor and/or Indian Child Welfare, who shall assist either the child or a child's parent(s), guardian or custodian in obtaining appropriate and available services as well as assisting in any subsequent filing of a petition alleging that the family is in need of services.

#### Sec. 3-18-3 Withdrawal of Request

A request stating that a family is in need of services may be withdrawn by the party submitting the request at any time prior to the adjudication of any petition filed in the proceedings.



#### Sec. 3-18-4 Authorization to File Petition

A petition alleging that a family is in need of services shall not be filed unless the juvenile presenter has determined and endorsed upon the petition that the filing of the petition is in the best interest of the child and his/her family.

#### Sec. 3-18-5 Petition, Required Signatures

A petition alleging that a family is in need of services shall be signed by both the juvenile presenter and the party submitting the request as authorized in Sec. 3-18-1 of this code.

#### Sec. 3-18-6 Petition, Form and Contents

A petition alleging that a family is in need of services shall be entitled "*In the Matter of the Family of \_\_\_\_\_, a child*" and shall set forth:

1. The name, birthdate, and residence address of the child;
2. The name and residence address of the parent(s), guardian or custodian of the child;
3. That the family is in need of services as defined in Sec. 3-1-3 of this code.
4. That the petitioner has exhausted or the respondent has refused appropriate and available services as evidenced by a report which shall be prepared and submitted by the juvenile counselor at the same time the petition is filed, or in the case of a petition based upon a child's habitual and unjustifiable absence and/or tardy from school and/or the child is incorrigible, that a declaration as required under Sec. 3-18-1 of this code has been filed by a school official; and
5. The court intervention is necessary to secure services which are accessible to the court; and
6. The additional required allegations set forth in Sec. 3-18-7 or Sec. 3-18-8 of this code.

#### Sec. 3-18-7 Petition, Additional Required Allegations for School Absences/ Tardiness

In addition to the allegations required under Sec. 3-18-6 of this code, a petition alleging that a child is habitually and without justification absent and/or tardy from school shall also allege the following:

1. That the school and the child's parent(s), guardian or custodian have held a meeting or the child's parent(s), guardian or custodian has refused to attend a meeting to discuss the child's habitual and unjustified absence and/or tardiness from school;
2. That the school has provided an opportunity for counseling to determine whether a curriculum change (as defined in Sec. 3-1-3 of this code) would resolve the child's problem; or if the local school board or governing authority of a private school provides an alternative education program, that the child has been provided with an opportunity to enroll in the alternative education program.
3. That the school submits appropriate documents to corroborate the habitual, and unjustified absence and/or tardiness from school and/or incorrigibility of the child.

Sec. 3-18-8 Petition, Additional Required Allegations for Breakdown in the Parent-Child Relationship

In addition to the allegations required under Sec. 3-18-6 of this code, a petition alleging that there is a breakdown in the parent-child relationship shall also allege that the filing of the petition was preceded by complying with each of the following that are applicable and appropriate:

1. The child and his/her family have participated in counseling or either the child or his/her family has refused to participate in family counseling;
2. The child has been placed in the home of a relative, if available, or the child has refused placement in the home of a relative;
3. The child has sought assistance at an appropriate juvenile shelter care facility for runaways or the child has refused assistance from such facility; or
4. The child has been placed in a foster home or the child has refused placement in a foster home.

Sec. 3-18-9 Summons in a Family in Need of Services Proceeding

After a petition alleging that a family is in need of services has been filed, a written summons shall be issued to the child, the child's parent(s), guardian or

custodian, their counsel and to such other persons as the court considers proper or necessary parties. The content and service of summons shall be in accordance with Sections 3-11-6 and 3-11-7 of this code.

## CHAPTER 19. FAMILY IN NEED OF SERVICES – CONSENT DECREE

### Sec. 3-19-1 Availability of Consent Decree

At any time after the filing of a petition alleging that family is in need of services and before entry of a judgment, the court may, on motion of the juvenile presenter or that of the child, his/her parent(s), guardian or custodian, or their counsel, suspend the proceedings and continue the family under supervision under terms and conditions negotiated with the juvenile counselor and agreed to by all the parties affected. The court's order continuing the family under supervision under this section shall be known as the consent decree.

### Sec. 3-19-2 Objection to Consent Decree

If the child or his/her parent(s), guardian or custodian objects to a consent decree, the court shall proceed to findings, adjudication and disposition of the case.

### Sec. 3-19-3 Court Determination of Appropriateness

If the child or his/her parent(s), guardian or custodian does not object, the court shall proceed to determine whether it is appropriate to enter a consent decree and may, in its discretion, enter the consent decree.

### Sec. 3-19-4 Duration of Consent Decree

A consent decree shall remain in force for six (6) months unless the family is discharged sooner by the juvenile counselor. Prior to the expiration of the six (6) month period and upon the application of the juvenile counselor to any other agency supervising the family under a consent decree, the court may extend the decree for an additional six (6) months in the absence of objection to extension by the child or his/her parent(s), guardian or custodian. If the child or his parent(s), guardian or custodian objects to the extension, the court shall hold a hearing and make a determination on the issue of extension.

### Sec. 3-19-5 Failure to Fulfill Terms and Conditions

If, either prior to discharge by the juvenile counselor or expiration of the consent decree, the child or his/her parents(s), guardian or custodian fails to fulfill the express terms and conditions of the consent decree, the petition under which the family was continued under supervision may be reinstated in the discretion of

the Judge. In this event, the proceeding shall be reinstated as if the consent decree had never been entered.

#### Sec. 3-19-6 Dismissal of Petition

After a family is discharged by the juvenile counselor or completes a period under supervision without reinstatement of the petition alleging that the family is in need of services, the petition shall be dismissed without prejudice.

### CHAPTER 20. FAMILY IN NEED OF SERVICES – HEARING AND DISPOSITION

#### Sec. 3-20-1 Conduct of Hearings

Family in need of services hearings shall be conducted by the juvenile court separate from other proceedings. At all hearings, the child and the child's family, guardian or custodian shall have all the applicable rights listed in Chapter 7 of this code. The general public shall be excluded from the proceedings. Only the parties, their counsel, witness and other persons requested by the parties or the court shall be admitted. All information in the juvenile court shall be strictly confidential and shall not be disseminated to third parties without a court order.

#### Sec. 3-20-2 Notice of Hearings

Written notice of all family in need of services hearings shall be given to the child, the child's parent(s), guardian or custodian, their counsel, Indian Child Welfare, the Juvenile Presenter and any other person the court deems necessary for the hearing at least five (5) calendar days prior to the hearing in accordance with Sections 3-11-6 and 3-11-7 of this code.

#### Sec. 3-20-3 Adjudicatory Hearing

The court, after hearing all of the evidence bearing on the allegations contained in the petition, shall make and record its findings as to whether the family is a family in need of services. If the court finds on the basis of clear and convincing evidence that the family is a family in need of services, the court may proceed immediately or at a later hearing to make disposition of the case. If the court does not find that the family is a family in need of services, it shall dismiss the petition.

#### Sec. 3-20-4 Predisposition Studies, Reports and Examinations

The court may order any appropriate predisposition study, report or examination under Chapter 14 of this code.

### Sec. 3-20-5 Dispositional Hearing

In that part of the hearing on dispositional issues, all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value (which means the court may use this evidence and give it the appropriate weight it deserves) had it been offered during the part of the hearings on adjudicatory issues. The court shall consider any predisposition report, physician's report or social study it may have ordered and afford the child, the child's parent(s), guardian or custodian and the child's counsel an opportunity to controvert the factual contents and conclusions of the report(s). The court shall also consider the alternative predisposition report or recommendations prepared by the child or the child's counsel, if any.

### Sec. 3-20-6 Disposition Alternatives

If the court finds that a family is in need of services, the court may make and record any of the following orders of disposition, giving due weight to the need to preserve the unity of the family whenever possible:

1. Permit the child to remain with his/her parent(s), guardian or custodian subject to those conditions and limitations the court may prescribe, including protective supervision (as defined in the section 3-1-3 of this code) of the child by a local social services agency.
2. Referral of the child and his/her parent(s), guardian or custodian to an appropriate social service agency or mental health agency for participation in counseling or other treatment program as ordered by the court;
3. Transfer legal custody of the child to any of the following if the family is found to be a family in need of services due to a breakdown in the parent-child relationship:
  - A. A relative or other individual who, after study by the juvenile counselor or other agency designated by the court, is found by the court to be qualified to receive and care for the child;or
  - B. An appropriate agency for placement of the child in an appropriate juvenile shelter care facility (as defined in Section 3-1-3 of this code), for not more than thirty (30) days.

- C. The court may order a simultaneous directed referral of the family to a social services agency for counseling and/or other social assistance. A child may be placed under this section for an additional period for not more than ninety (90) days after a hearing to determine the necessity of an additional placement.

#### Sec. 3-20-7 Restriction on Dispositional Placement

The child shall be confined in an institution established for the care and rehabilitation of juvenile offenders unless a child whose family is found to be in need of services is also found to be a juvenile offender. Under no circumstances shall a child whose family is found to be in need of services be committed or transferred to a penal institution or other facility used for the execution of sentences of persons convicted of crimes.

#### Sec. 3-20-8 Modification, Revocation or Extension of Dispositional Order

The court may hold a hearing to modify, revoke or extend a dispositional order at any time upon the motion of:

1. The child;
2. The child's parent(s), guardian or custodian;
3. The child's counsel;
4. The juvenile counselor;
5. The juvenile presenter;
6. Indian Child Welfare or the institution, agency or person vested with legal custody of the child or responsibility for protective supervision;  
or
7. The court on its own motion.

#### Sec. 3-20-9 Termination of Dispositional Order

Any dispositional order concerning a family in need of services shall remain in force for a period no longer than six (6) months. The dispositional order concerning a child whose family is found to be in need of services shall also automatically terminate when the child reaches his/her eighteenth (18<sup>th</sup>) birthday or is legally emancipated by the court.

### CHAPTER 21. JUVENILE RECORDS

#### Sec. 3-21-1 Juvenile Court Records

A record of all hearings under this code shall be made and preserved. All records of the juvenile court shall be confidential and shall not be open to inspection to anyone except the following:

1. The child;
2. The child's parent(s), guardian or custodian;
3. The child's counsel;
4. The court personnel including but not limited to the Tribal Prosecutor, Juvenile Probation Officer and Juvenile Counselor; or
5. Any other person by order of the court having a legitimate interest in the particular case or the work of the court.

#### Sec. 3-21-2 Law Enforcement Records

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

1. The child;
2. The child's parent(s), guardian or custodian;
3. The child's counsel;
4. Law enforcement directly involved in the handling of the case;
5. The Court personnel including but not limited to the Tribal Prosecutor, Juvenile Probation Officer and Juvenile Counselor; or
6. Any other person by order of the court having a legitimate interest in the particular case or the work of the court.

#### Sec. 3-21-3 Destruction of Records

When a child who has been the subject of the proceedings of the juvenile court reaches his/her eighteenth (18<sup>th</sup>) birthday, or the dispositional order is terminated if the dispositional order extends behind his/her eighteenth (18<sup>th</sup>) birthday, the court shall order the clerk of court to seal both the law enforcement records and the records of the juvenile court. The clerk of the court shall respond to all record inquiries as if no record had ever existed.

### CHAPTER 22. JUVENILE APPEALS

#### Sec. 3-22-1 Who Can Appeal

Any party to a hearing of the juvenile court may appeal a final order of the juvenile court, including all transfer, adjudication and/or dispositional orders.

#### Sec. 3-22-2 Time Limit for Appeal

Any party to appeal a final order or disposition of the juvenile court shall file a written notice of appeal within sixty (60) days of the final order or disposition.

### Sec. 3-22-3 Record

For purposes of appeal, a record of proceedings shall be made available to the child, his/her parent(s), guardian or custodian, and the child's counsel. Costs of obtaining this record shall be paid by the party seeking the appeal unless the court determines indigency.

### Sec. 3-22-4 Stay of Appeal

A final court order or disposition of a hearing may be stayed by such appeal upon motion of a party.

### Sec. 3-22-5 Conduct of Proceedings

All appeals shall be conducted in accordance with the White Earth Band of Ojibwe Rules of Procedure for the White Earth Tribal Court so long as those provisions are not in conflict with the provisions of this juvenile code.