

Proposed Ordinance 2025-09: Clarifying Tribal Social Services Scope of Services

An ordinance of the Keweenaw Bay Indian Community enacted under the authority of the Constitution and By-Laws of the Keweenaw Bay Indian Community for the purpose of clarifying the scope of services provided by the Department of Tribal Social Services by amending Title 14, Chapter 2, Sections 14-2, 14-5, 14-35, 14-61, 14-94, 14-97, 14-106, 14-128, 14-129, 14-134, 14-136, 14-137, 14-139, and 14-224 to read as follows:

Sec. 14-2. Applicability of rules of judicial procedure and Tribal Code.

All rules of judicial procedure established by the trial division, and all provisions of this Code, shall be equally effective in proceedings conducted before the Juvenile division except as specifically provided to the contrary herein or therein. In the event of conflict between the provisions of this chapter and rules of judicial procedure established by the trial division, the provisions of this chapter shall govern.

(Prior Code, § 4.102; Ord. No. 2012-04, 9-25-2012)

Sec. 14-5. Children within the jurisdiction of the court.

Dependent Juvenile means any Juvenile who is homeless or destitute, or without proper support, through no fault of his parents, Guardian, or Custodian. A Juvenile shall not be deemed a Dependent solely on the basis of committing, or being adjudicated for, delinquent acts as defined in this Code.

Sec. 14-35. Department of tribal social services.

- (a) For all matters related to foster care, adoption, Guardianship, and/or out-of-home placement for persons under the age of 21 years within the tribal court's jurisdiction, TSS shall provide the following services to the court: prevention, protective services for Juveniles and adults, foster care licensing, and supervision of tribally licensed foster homes. TSS is authorized to provide advocate, Guardian Ad Litem, and other duties and/or services as deemed appropriate by the department head, and such services shall be provided by the TSS caseworker or TSS Designee as assigned by the TSS department head when ordered by the court.
- (b) The court may appoint someone other than a TSS caseworker or TSS Designee to provide the services identified above when the court makes findings that such an appointment is in the best interests of the Juvenile, vulnerable adult, or family involved.
- (c) TSS is authorized to utilize IV-E funds, programs, and services for all eligible persons it serves.
- (d) TSS caseworkers and TSS Designees are mandatory reporters for instances described in section 14-295 for all persons within the service area.

(Prior Code, §4.204; Ord. No. 2012-04, 9-25-2012)

Sec. 14-61. Commencement of delinquency proceedings.

Delinquency proceedings shall be commenced by the filing of a petition with the court by a police officer, the tribal prosecuting attorney, or the Juvenile's parent or legal Guardian.

(Prior Code, § 4.301; Ord. No. 2012-04, 9-25-2012)

Sec. 14-94. Custodial Detention—Procedure.

The police officer shall do the following upon taking a Juvenile into Custodial Detention:

- (1) Forthwith advise the Juvenile of the reason for his Custodial Detention.
- (2) Determine whether the Juvenile as a result of intoxication, consumption of controlled substances, neglect, or otherwise requires immediate medical care. If so, such Juvenile shall be transported to the nearest location where such care would be available.
- (3) Notify the Juvenile's custodial parents, Guardian, or Custodian that the Juvenile has been detained and the reason therefor.
- (4) Forthwith bring the Juvenile before the court for a preliminary inquiry. If such Custodial Detention shall occur when a tribal judge shall be unavailable for a preliminary inquiry, the Juvenile shall be delivered into the custody of TSS which shall arrange for shelter care for such Juvenile as hereinafter provided.
- (5) In the event that such Juvenile was not detained because of a custodial order, the police officer shall immediately prepare a petition stating the basis for the Juvenile's Custodial Detention. Such petition may be handwritten and informal but shall state clearly the facts and circumstances which in the officer's judgment required Custodial Detention. At the earliest possible time, but prior to a preliminary inquiry, the tribal prosecuting attorney shall file a formal petition with the court.

(Prior Code, § 4.504; Ord. No. 2012-04, 9-25-2012)

Sec. 14-97. Preliminary inquiry—Adjournment.

If the Juvenile's parent, Guardian, or Custodian shall not be present at the preliminary inquiry, the Juvenile court shall determine whether or not satisfactory efforts have been made to notify and obtain their presence at the hearing. If the Juvenile court finds that further efforts are likely to bring about the attendance at the preliminary inquiry of the Juvenile's parents, Guardian, or Custodian, the Juvenile court shall adjourn the hearing for a period not to exceed 24 hours during which TSS or other persons directed by the Juvenile court shall make continued efforts to obtain the presence of a parent, Guardian, or Custodian at the hearing. If the court finds that further efforts are not likely to result in the attendance of the Juvenile's parents, Guardian, or Custodian at the preliminary inquiry, the Juvenile court shall make findings as to the facts and

circumstances of the parents, Guardian, or Custodian's absence and direct TSS or other persons directed by the court to make continuing efforts to locate the parents, Guardian, or Custodian of the Juvenile, and the Juvenile court shall proceed on the petition.

(Prior Code, § 4.506; Ord. No. 2012-04, 9-25-2012)

Sec. 14-106. TSS's continuing duties upon a petition being held in abeyance.

(a) *Dependency/Neglect proceedings:*

(1) During the period of abeyance, the TSS caseworker shall meet regularly with the Juvenile and his parents, Guardian, or Custodian, to ensure that the terms and conditions of abeyance are being followed and to ensure that progress in the selected diversionary program is being achieved.

(2) Upon the successful completion of the diversionary program, the TSS caseworker shall notify the court and request dismissal of the petition.

(3) In the event that the TSS caseworker shall determine, at any time during the period of abeyance, that the Juvenile and/or the Juvenile's parents, Guardian, or Custodian are not participating in the agreed upon diversionary program, or if participating, that no significant progress is being made, the TSS caseworker shall notify the court to proceed with the petition.

(b) *Delinquency proceedings:*

(1) During the period of abeyance, the probation officer or other court officer assigned by the court shall meet regularly with the Juvenile and his parents, Guardian, or Custodian, to ensure that the terms and conditions of abeyance are being followed and to ensure that progress in the selected diversionary program is being achieved.

(2) Upon the successful completion of the diversionary program, the tribal prosecuting attorney, the probation officer, or other court officer assigned by the court shall notify the court and request dismissal of the petition.

(3) In the event that the probation officer or other court officer shall determine, at any time during the period of abeyance, that the Juvenile and/or the Juvenile's parents, Guardian, or Custodian are not participating in the agreed upon diversionary program, or if participating, that no significant progress is being made, the tribal prosecuting attorney, the probation officer, or other court officer assigned by the court shall notify the court to proceed with the petition.

(Prior Code, § 4.515; Ord. No. 2012-04, 9-25-2012)

Sec. 14-128. Scheduling of adjudicative hearing.

(a) An adjudicative hearing shall be held:

(1) Within 30 days of a finding of probable cause at a preliminary inquiry;

- (2) Within 30 days of the date when the tribal prosecuting attorney, probation officer, TSS caseworker, or other court officer notifies the court to proceed on a petition previously held in abeyance; or
 - (3) The Juvenile and the Juvenile's parents, Guardian, or Custodian may petition the court for an emergency review of placement hearing prior to the adjudicatory hearing if the Juvenile is in out-of-home placement.
- (b) In the event that the adjudicative hearing is not held within the above-specified period, the petition shall be dismissed and shall not be accepted for re-filing with respect to the same incident, unless:
- (1) The hearing was continued upon motion of the Juvenile, Juvenile's parents, Guardian, or Custodian; or
 - (2) The hearing was continued upon motion of the tribal prosecuting attorney, TSS, probation officer, or other court officer, which motion shall only be granted if the court shall find that:
 - a. Material evidence or witnesses will not be available within the 30-day period;
 - b. The presenting officer has exercised due diligence to obtain the evidence or the testimony of the witnesses;
 - c. Reasonable grounds exist to believe that the material evidence or witnesses will be available within a reasonable time; and
 - d. The Juvenile, parents, Guardian, or Custodian of the Juvenile will not be prejudiced by the proposed delay.

(Prior Code, § 4.601; Ord. No. 2012-04, 9-25-2012)

Sec. 14-129. Summons for appearance.

Prior to the adjudicatory hearing, the Juvenile court shall issue a summons to appear to the Juvenile, the Juvenile's parents, Guardian, or Custodian, the petitioner, the TSS caseworker or Designee (in cases of dependency/neglect), any person previously requested by the Juvenile or his parents, Guardian, or Custodian to be summoned, and any person whose presence the Juvenile court believes necessary. The summons shall state upon its face the name of the court, the title of the proceeding, and the date, time, and location of the hearing. Such summons shall be personally served upon the Juvenile and his parents, Guardian, or Custodian at least 15 days prior to the date of the hearing. The summons shall further notify the persons summoned that their failure to appear at the hearing may constitute a contempt of the court.

(Prior Code, § 4.602; Ord. No. 2012-04, 9-25-2012)

Sec. 14-134. Dispositional hearing—Pre-hearing investigation report.

- (a) Prior to the dispositional hearing, the TSS caseworker (in a dependency/neglect case) or the probation officer or other court officer (in a delinquency case) shall prepare a report containing a recommended disposition or recommended alternatives to disposition. Such

report shall contain a specific plan for the placement of the Juvenile and, if applicable, for the rehabilitation of the family calculated to resolve the problems which brought the Juvenile before the court.

- (b) The report shall contain a summary of the data considered by the TSS caseworker, probation officer, or other court officer in developing the report, the necessity for the proposed plan of disposition, the goal sought to be achieved by the plan, and the proposed steps to be taken toward such goals under the proposed plan.
- (c) To the extent that there shall be less restrictive alternatives than that recommended as a disposition by the TSS caseworker, probation officer, or other court officer, his report shall state the reasons for not recommending the less restrictive alternatives.
- (d) At least 48 hours prior to the dispositional hearing, the TSS caseworker, probation officer, or other court officer shall file the pre-dispositional report with the Juvenile court and provide copies thereof to the Juvenile (in a delinquency case), any counsel of record, and the Juvenile's parent, Guardian, or Custodian.

(Prior Code, § 4.608; Ord. No. 2012-04, 9-25-2012)

Sec. 14-136. Dispositional hearing—Manner of conducting.

- (a) Prior to proceeding with disposition, the court shall inform the Juvenile and his parents, Guardian, or Custodian of their rights under the Constitution of the United States and the Indian Civil Rights Act.
- (b) The court may take testimony, on its own motion or upon the motion of any of the parties, the Juvenile's parents, foster parent, pre-adoptive parent, Guardian, relative providing care, or Custodian.
- (c) The court shall consider the pre-disposition report submitted by the TSS caseworker, probation officer, or other court officer, and shall afford the Juvenile's parents, foster parent, pre-adoptive parent, Guardian, relative providing care, or Custodian and anyone acting on their behalf an opportunity to comment upon the recommendations in the report.
- (d) The court may consider any alternative recommendations as to disposition submitted by the Juvenile, the Juvenile's parents, foster parent, pre-adoptive parent, Guardian, relative providing care, or Custodian.
- (e) The court shall enter a dispositional order stating its findings for the disposition ordered.

(Prior Code, § 4.610; Ord. No. 2012-04, 9-25-2012)

Sec. 14-137. Dispositional alternatives.

- (a) *Delinquency petitions.*

- (1) Prior to an adjudication of delinquency, the tribal prosecuting attorney, probation officer, or other court officer may recommend the following alternative dispositions:
 - a. That the petition be dismissed without further proceedings; or

- b. That based upon the agreement of the Juvenile and the Juvenile's parents, Guardian, or Custodian's agreement to faithfully participate in a voluntary diversionary program, the petition be held in abeyance for:
 - 1. Up to 180 days; and
 - 2. Which period may be extended only upon agreement of all the parties to the petition but may not exceed one year; or
 - c. The petition may be waived into Adult court upon motion of the tribal prosecuting attorney in accordance with procedures set out in chapter 8 of this title.
- (b) *Dependency and neglect petitions.*
- (1) Prior to adjudication as a Dependent or Neglected Juvenile, the court may make any of the following dispositions:
 - a. Allow the parents, Guardian, or Custodian to participate in a voluntary diversion program upon the admission by the parents, Guardian, or Custodian to the allegations in the petition and hold the petition in abeyance for a specified period of time not to exceed 180 days;
 - b. Permit the Juvenile to remain with his parents, Guardian, or Custodian subject to limitations and conditions as the court may prescribe; or
 - c. Place the minor with a relative within the jurisdiction of the court subject to limitations and conditions as the court may prescribe. This shall be the court's preferred placement option for minors not able to be placed under subsections (b)(1)a or b of this section;
 - (2) Place the Juvenile in an approved foster home within the territorial jurisdiction of the court subject to such limitations and conditions as the court may prescribe;
 - (3) Place the Juvenile in a shelter care facility approved by the court;
 - (4) Place the Juvenile in a foster home or a relative's home outside of the territorial jurisdiction of the court subject to such limitations and conditions as the court may prescribe;
 - (5) Place the Juvenile back into the home the Juvenile was removed from for a trial home visit. Trial home visits are for no longer than six months unless a longer visit is specifically authorized by court order; or
 - (6) Recommend that proceedings designed to terminate parental rights be initiated.
- (Prior Code, § 4.611; Ord. No. 2012-04, 9-25-2012)

Sec. 14-139. Modification of dispositional order.

- (a) *Modification.* A dispositional order may be modified by the court at any time for good cause shown upon the motion of the Juvenile, the Juvenile's parents, Guardian, or Custodian, the TSS caseworker, probation officer, or other court officer.
- (b) *Requirement for a hearing.*

- (1) A hearing shall be required upon a motion for modification of a dispositional order that would involve a change of custody.
 - (2) No hearing shall be required upon a motion for modification of a dispositional order when the proposed modification does not involve a change of custody.
- (c) *Hearing notice requirements.* Where a proposed modification of a disposition shall involve a change in custody, all parties to the original proceeding shall be personally served at least 48 hours prior to the hearing on the motion with a notice setting forth the name of the court, the title of the proceedings, a statement that the hearing is to review the disposition, and the date, time, and location of the hearing.
- (d) *Hearing procedure.*
- (1) The court shall advise the Juvenile, and his parents, Guardian, or Custodian of their respective rights under the Constitution of the United States and the Indian Civil Rights Act.
 - (2) The court shall give each party the opportunity to address the court upon the proposed modification to the dispositional order.
 - (3) The court shall review the performance of the Juvenile and his parents, Guardian, or Custodian under the original dispositional order.
- (e) *Order to modify the dispositional order.*
- (1) Upon a finding of good cause for the modification, the court may order the original dispositional order modified.
 - (2) If the court does not find good cause for the modification, no change shall be made to the dispositional order and the motion to modify shall be dismissed.

(Prior Code, § 4.613; Ord. No. 2012-04, 9-25-2012)

Sec. 14-224. Waiver of jurisdiction; time and manner.

- (a) The Juvenile division may, in delinquency proceedings, waive jurisdiction over any Juvenile who may come before it and, upon such waiver of jurisdiction over the Juvenile and the offense charged, the jurisdiction shall be assumed by the trial division of the tribal court.
- (b) A waiver request may be initiated by the tribal prosecutor or any other person whom the court shall deem to have an interest in the matter.
- (c) No waiver request shall be considered by the court after the commencement of the adjudicatory hearing.

(Prior Code, § 4.901; Ord. No. 2012-04, 9-25-2012)