

CHAPTER 7

STOCKBRIDGE-MUNSEE TRIBAL LAW YOUTH CODE GENERAL PROVISIONS

Section 7.1 Council Findings

(A) Recognizing that there is no resource that is more vital to the continued existence and integrity of the Stockbridge-Munsee Community Band of Mohican Indians than its children, the Stockbridge-Munsee Tribal Council finds:

(1) That Art. VII, Sec. 1 (f) of the Stockbridge-Munsee Community Constitution and By-Laws (approved 11-18-37) which states, in part: "To promulgate and enforce ordinances, subject to the approval of the Secretary of the Interior, governing the conduct of members of the Community; ...and establishing proper agencies for law enforcement of the Community; ..." authorizes the creation of a Children's Court; and

(2) That Indian families are often broken up by the unwarranted removal of their children from them by non-tribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(3) That the States exercising jurisdiction over Indian child custody proceedings have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families; and

(4) That the Stockbridge-Munsee Community needs a recognized Children's Court system to insure that off-reservation courts will be willing to return children of the Tribe to the Stockbridge-Munsee Community for care and guidance; and

(5) That the children of the Stockbridge-Munsee Community must receive, preferably in their own homes, the care and guidance needed to prepare them to take their places as adult members of the Stockbridge-Munsee Community; and

(6) That the Stockbridge-Munsee Community has a direct interest in protecting Indian children who reside or are domiciled on the Stockbridge-Munsee Reservation irrespective of blood quantum; and

(7) That the Stockbridge-Munsee Community, must protect and preserve the essential tribal relations and cultural heritage of its children consistent with the best interests of the children: and

(8) That the appropriate means of addressing these concerns is through the passage of a child welfare ordinance under the title Stockbridge-Munsee Tribal Law, Youth Code.

Section 7.2 Purpose and Construction

(A) Council Declaration of Purpose: This Code shall be interpreted and understood to accomplish the following tribal objectives:

- (1) To insure that the young Indian people of the Stockbridge-Munsee Community receive assistance and guidance in their own homes, whenever possible, separating the youth from his or her parent only when necessary for his or her welfare;
- (2) To protect and preserve the identity and pride of the young Indian people of the Stockbridge-Munsee Community as American Indians;
- (3) To provide a simple procedure for addressing and resolving conflicts involving Indian youth that is reflective of tribal traditions as well as the prevailing community standards, and which affords all affected persons a fair and impartial hearing, consistent with individual rights;
- (4) To insure that off-reservation courts will be willing and able to return young people of the Tribe to the Stockbridge-Munsee Community for care and guidance;
- (5) To insure the continued existence of the Tribe by protecting against the unwarranted removal of Indian children from their families;
- (6) To establish a Youth Court that shall protect the child's interest by choosing a course of action that least restricts the child's freedom and best promotes the child's health, safety, welfare and tribal identity consistent with the interests of the Stockbridge-Munsee Community;
- (7) In situations where it is not possible to maintain family unity, to find the next best alternative, mindful of the child's tribal heritage and cultural background, as well as other special needs;
- (8) To insure the care, protection, and wholesome mental and physical development of all Indian children of the Stockbridge-Munsee Community;
- (9) To respond to children's needs for care and treatment through community based programs;
- (10) To provide the children with and assure the availability of preventive services, accountable case planning, and other social services designed to preserve and/or reunify families;
- (11) To insure that the sovereignty of the Stockbridge-Munsee Tribe is recognized in all matters affecting the welfare of the young people of the Stockbridge-Munsee Community.

(B) Construction: This Code is exempted from the rule of strict construction. It shall be read and understood in a manner that gives full effect to the purposes for which it is enacted.

(C) Applicable Law: Whenever there is uncertainty or a question as to the interpretation of certain provisions of this Code, tribal law or custom shall be controlling and where appropriate, may be based on the written or oral testimony of a qualified elder, historian, or other representative.

(D) Crimes Committed by Juveniles: Delinquent acts committed by any Indian youth shall be disposed of as provided by Stockbridge-Munsee Tribal Law, except as otherwise may be provided.

Section 7.3 Jurisdiction

(A) Exclusive Jurisdiction: The Court shall have exclusive original jurisdiction over any proceeding concerning a youth alleged to be in need of care, termination of parental rights, adoption, paternity, or guardianship which involves:

- (1) Any Indian youth who resides or is domiciled on the Stockbridge-Munsee Community Reservation;
- (2) Any youth who is a member or is eligible for membership in the Stockbridge-Munsee Tribe regardless of the youth's residence or domicile; or
- (3) Any Indian youth who has been placed in temporary care on the reservation or in any care facility licensed by the Tribe for placement of Indian youth.

(B) Jurisdiction Over Adults: The Court shall have jurisdiction over adults in aid of its powers under this Code, and may make such orders as are necessary for the welfare of a youth.

(C) Concurrent Jurisdiction: When state, federal or other tribal courts have jurisdiction over any of the matters provided for in this Code, the Court has concurrent jurisdiction over the same matters to an extent consistent with federal laws.

(D) Jurisdiction - Limitations: The limitations on jurisdiction in this section are not intended to reflect the Tribe's view as to the legally permissible limits of jurisdiction, but are merely designed to define tribal activity in this area in accordance with tribal Priorities and resources.

(E) Jurisdictional Agreements: The Tribe may enter into such intertribal and tribal-state agreements regarding jurisdiction over youth custody matters as it deems appropriate and necessary to protect the best interest of Stockbridge-Munsee Community youth.

Section 7.4 Transfers of Jurisdiction and Intervention.

(A) Notice to Other Tribes of Pendency of Action: When the Court or the Indian Child Welfare Worker has reason to believe a youth, who is a party to an action under this Code, may be

enrolled or may be a member or eligible for enrollment or membership in another tribe, the Indian Child Welfare Worker shall notify the other tribe of the pendency of the action.

(B) Transfer of Jurisdiction to Stockbridge-Munsee Community Youth Court: The Court may accept or decline any transfer of jurisdiction over a youth by ex parte motion, but shall allow aggrieved parties a hearing on their objections, if any.

(C) Child Protective Board Investigation and Recommendation: The Child Protective Board and the Indian Child Welfare Worker shall meet, investigate, and make recommendations to the Tribal Council on whether to accept or request a transfer of jurisdiction, or to intervene in another court's proceeding in the following cases:

- (1) When the Tribe has received notice or has reason to believe that an action involving a Stockbridge-Munsee Youth is pending in another court, or
- (2) When the Tribe has received a request from another jurisdiction to transfer a case from Stockbridge-Munsee Community Youth Court to the other jurisdiction.

(D) Guidelines for Transfers of Cases Involving Youths with Multi-Tribal Affiliations: In deciding whether to transfer to or accept transfer from another jurisdiction, in cases involving a youth who may be enrolled or eligible for enrollment in another tribe, the Child Protective Board and the Tribal Council shall be guided by the following considerations:

- (1) The youth's length of residence on or near a tribe's territorial jurisdiction;
- (2) The frequency of contacts the youth has had with a particular tribe;
- (3) The youth's participation in tribal activities;
- (4) Previous adjudications by the other tribe's court, if any, with respect to the Youth;
- (5) Residence on a particular reservation by the youth's parent or extended family member with whom the youth has resided for a substantial Period of time;
- (6) The wishes of the parent(s) and of the youth if he or she is over the age of twelve;
- (7) Tribal membership of the youth's parent, guardian, or other custodian;
- (8) Interest asserted by the tribe in response to notice given by the Stockbridge-Munsee Tribe;
- (9) Tribal programs and resources available to meet the youth's needs and problems; and
- (10) Any other factors the Child Protective Board and Tribal Council deem relevant.

(E) Tribal Council Action: The Tribal Council shall decide whether to accept, reject or modify the recommendation of the Child Protective Board.

(F) Requests for Transfer or Intervention: If the Tribal Council decides that the Tribe should intervene in another court's action or should request that jurisdiction be transferred to the Stockbridge-Munsee Community Youth Court, the Tribal Council shall request the Presenting Officer to file the appropriate petition. Upon receipt of transfer from another jurisdiction, the presenting officer shall file the appropriate action in the Youth Court.

(G) Transfer to Another Jurisdiction: If the Tribal Council decides that the Tribe should transfer the case to another jurisdiction, the Tribal Council shall request the presenting officer to file a motion in the Youth Court for an order transferring jurisdiction.

Section 7.5 Definitions

(A) Abandon: When a parent or custodian leaves a youth without provisions for care or support for a period exceeding three (3) days and the parents whereabouts cannot be ascertained, or when a parent voluntarily or pursuant to a court order relinquishes care and custody of a youth and fails to communicate with the youth other than on an incidental basis for a period exceeding one hundred eighty (180) days.

(B) Adult: Any person subject to the jurisdiction of the Stockbridge-Munsee Tribe who is either eighteen (18) years of age or older, married or otherwise emancipated.

(C) Court, Tribal Court or Youth Court: The Stockbridge-Munsee Community Court when exercising jurisdiction under this Code, unless the context clearly requires otherwise.

(D) Custodian: An adult person, other than a parent or guardian, who has been given temporary physical care, custody and control of a youth, including the duty to provide food, clothing, shelter, medical care, education, and supervision to the youth.

(E) Delinquent Act: An act committed by a youth which if committed by an adult would be designated a crime or for which a penalty is provided under tribal law.

(F) Domicile/Residence: The determination of domicile and residence shall be in accordance with tribal law and custom. In the absence of other factors clearly demonstrating an intent to establish a permanent home off the reservation, a youth's domicile/residence shall be deemed to be within the reservation.

(G) Extended Family: This term shall be defined by the law or custom of the Indian youth's tribe, or in the absence of such law or custom, shall be a person who has reached the age of eighteen (18) and who is the youth's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or step-parent.

(H) Guardian: A person other than the youth's parent who is by tribal law or custom responsible for that youth.

(I) Guardian Ad Litem: An adult appointed by the Court to represent the best interests of a youth in any proceeding to which he or she may be a party.

(J) Guardianship: Authority, including Legal Custody, transferred or assumed by Tribal Court approved agreement or Tribal Court action to make all decisions of legal import for a Youth.

(K) ICWW: Indian Child Welfare Worker.

(L) Indian Tribe: Any Indian tribe, band, nation, or other organizational group, or community of Indians traditionally recognized as an Indian tribe by the Tribal Council or recognized as eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in Section 3(c) of the Alaska Native Claims Settlement Act as amended.

(M) Indian Youth: Means any unmarried person who is under eighteen (18) years of age and is either:

- (1) enrolled in or a member of an Indian tribe or is eligible for enrollment or membership in an Indian tribe, or
- (2) the biological child of an enrolled member of an Indian tribe or eligible member of an Indian tribe; or
- (3) a member of an Indian tribe as documented by Tribal Resolution.

(N) Legal Custody:

- (1) Authority transferred or assumed by Tribal Court approved agreement or Tribal Court action to make decisions of legal import for a minor child as to care, custody, and control of the child;
- (2) Legal custody shall not include authority to place the minor child in another home or with any agency or to transfer the child's domicile;
- (3) Legal custody shall not include authority to enroll a youth in another tribe if the child is presently enrolled, or eligible for enrollment, in the Stockbridge-Munsee Tribe.
- (4) Legal custody shall be terminated upon Tribal Court order and the child shall immediately be given into the custody of the Court.

(O) Legal Custody (Temporary):

- (1) Authority over a minor child temporarily transferred in writing by the parent(s) of the child to any adult member of the child's extended family or tribe as to care, custody, and control of the child for a period of up to, but not exceeding, 180 days; or

(2) Absent written authority of the parent(s) temporary legal custody may be given by the parent(s) to members of the child's extended family only and shall not exceed thirty (30) days in duration;

(3) Notwithstanding any written agreement, temporary legal custody shall be terminated upon demand of the parent(s) and the child shall be immediately returned to the custody of the Parent(s);

(4) Temporary legal custody shall not include authority to place the minor child in another home or with any agency or to transfer the child's domicile;

(5) Temporary legal custody may be terminated by Tribal Court order upon determination of the Court that such action is in the best interests of the child and the child shall immediately be given into the custody of the Court.

(6) Temporary legal custody shall not include authority to enroll a youth in another Tribe if the child is presently enrolled, or eligible for enrollment, in the Stockbridge-Munsee Tribe.

(P) Parent: Includes a biological or adoptive parent but does not include persons whose parental rights have been terminated, nor does it include an unwed father whose paternity has not been acknowledged or established pursuant to PART VI, PATERNITY, of this Chapter.

(Q) Probable Cause/Reason to Believe: Facts which support a reasonable belief of the existence of a particular conclusion.

(R) Qualified Elder, Historian, or Other Tribal Representative: An individual who, because of his or her knowledge and experience, has been appointed by the Stockbridge-Munsee Community Tribal Council to testify as to the traditions and customs of the Stockbridge-Munsee Tribe.

(S) Reservation: Means "Indian Country" as defined in 18 U.S.C. 1151 and any lands not covered under such definition when title to such land is held by the United States in trust for the benefit of any Indian tribe or Indian individual and provided such land is subject to a restriction by the United States against alienation.

(T) Shelter Care: Means an emergency or temporary placement for youths in need of care.

(U) Stockbridge-Munsee Tribe: Means the Stockbridge-Munsee Community Band of Mohican Indians.

(V) Tribal Status: The tribe or tribes, if any, in which a youth is eligible to be enrolled or to be a member or is enrolled or is a member.

(W) Ward of the Court: Any youth appearing before the Youth Court and who is the subject of any proceeding over which the Court exercises jurisdiction.

(X) Written Authority: Written agreement, between the parent(s) and a member of the Youth's tribe as to temporary legal custody of the youth, duly notarized and approved by the Youth Court.

(Y) Youth (minor):

(1) A person under the age of eighteen (18) years.

(2) A person eighteen (18) years of age or older concerning whom proceedings are commenced in Youth Court prior to his or her eighteenth (18th) birthday.

(3) A person eighteen (18) years of age through twenty (20) years of age under the continuing jurisdiction of the Youth Court.

Section 7.6 The Court.

(A) Establishment: There is hereby established for the Stockbridge Munsee Tribe a division of the Stockbridge-Munsee Community Court to be known as the Stockbridge-Munsee Community Youth Court, hereinafter Youth Court.

(B) Judges and Judicial Officers: The Youth Court shall consist of one or more judges as elected by the Stockbridge-Munsee Tribe; and other judicial officers as may be appointed by the Stockbridge-Munsee Community Tribal Council.

(C) Qualifications: The Youth Court judges' qualifications and compensation shall be the same as for judges who sit on the Stockbridge-Munsee Community Court. Any judge of the Stockbridge-Munsee Community Court may serve as a judge of the Youth Court.

(D) Disqualification: In the event that all Tribal Judge are unable to hear and determine a matter due to absence, illness, or conflict of interest, the Tribal Council shall have authority to appoint a substitute judge in accordance with the Stockbridge-Munsee Community Court Code, Chapter 1, Section 1.02 (B) and Section 1.03 (H).

(E) Powers and Duties of Youth Court Judge: In carrying out duties and powers under this Code, judges of the Youth Court shall have the same powers and duties as judges of the Stockbridge-Munsee Community Court.

(F) Authority of the Youth Court:

(1) The Court is authorized to cooperate fully with any federal, state, tribal, public, or private agency to participate in any diversion, rehabilitation or training programs and to receive grants-in-aid to carry out the purposes of this Code.

(2) The Court may utilize such social services as may be furnished by any tribal, federal, state, or private agency.

Section 7.7 Social Services Staff

(A) Social Services Staff - Defined: "Social Services Staff" means those persons employed or appointed by the Stockbridge-Munsee Tribe who are trained to deliver services in specific social areas such as, but not limited to, mental health, alcohol and drug abuse, community health, and education.

(B) Duties: The Social Services Staff upon request of the Indian Child Welfare Worker shall assist the Indian Child Welfare Worker to:

(1) Request intervention in Indian Child Welfare cases in state court;

(2) Request transfer of Indian Child Welfare cases from state court to the Youth Court;

(3) Make recommendations to be included in the Indian Child Welfare Worker's pre-dispositional and pre-termination of parental rights reports under this Code.

(4) Recommend to the Tribal Council any changes that should be made in the Youth Code.

(5) Make recommendations to the Tribal Council governing the licensing and operation of shelter care, foster care and other youth Placement facilities.

Section 7.8 Indian Child Welfare Worker.

(A) Appointment: The Tribal Council shall appoint an Indian Child Welfare Worker to carry out the duties and responsibilities set forth in this Code.

(B) Qualifications: The Indian Child Welfare Worker shall have an educational background and/or prior experience in the field of delivering social services to Indian youth.

(C) Resource Development: The Indian Child Welfare Worker shall identify and develop within the tribal community resources designed to enhance each tribal youth's potential as a responsible member of the Stockbridge-Munsee Community.

(D) Duties Not Performed: The Indian Child Welfare Worker shall not be employed as, nor perform the duties of: prosecutor, defender, presenting officer, or law enforcement official.

(E) Duties: The Indian Child Welfare Worker shall:

(1) Make investigations as provided in this Code or as directed by the Youth Court;

(2) Make reports as provided in this Code or as directed by the Youth Court;

(3) Place a youth in shelter care as provided in this Code; and

(4) Perform such duties in connection with care, custody, or transportation of youth as the Youth Court requires.

Section 7.9 Presenting Officer.

(A) The Tribal Council shall appoint, a Presenting Officer to carry out the duties and responsibilities set forth in this Code. The Chief Judge of the Stockbridge-Munsee Community Court shall annually certify to the Tribal Council the number of qualified Presenting Officers needed to carry out the purposes of this Code.

(B) The Presenting Officer's qualifications and compensation shall be the same as those of the official who acts as Prosecutor for the Stockbridge-Munsee Community Court.

(C) The Tribal Attorney may act as the Presenting Officer.

(D) The Presenting Officer shall represent the people of the Stockbridge-Munsee Community in all proceedings under this Code, acting on their behalf and in their best interests.

(E) The Presenting Officer shall be empowered to establish policies and procedures necessary to carry out the duties of office, not inconsistent with Stockbridge-Munsee Community Tribal Law.

Section 7.10 Guardian Ad Litem.

(A) Appointment: The Youth Court, under any proceedings authorized by this Code, shall appoint for the purpose of that proceeding a guardian ad litem for a youth where it finds that the youth does not have a natural or adoptive parent, guardian, or custodian willing and able to exercise sound judgment as to the best interests of the youth, or upon the request of the Indian Child Welfare Worker.

(B) Qualifications: The guardian ad litem must be familiar with the rights of youth and provisions of this Code.

(C) Duties: A guardian ad litem shall:

(1) Represent the youth's best interest in any proceeding as required by the Court; and

(2) Make recommendations to the Court on disposition.

(D) Compensation: The Youth Court, with Tribal Council approval, shall determine what compensation, if any, shall be made to the Guardian Ad Litem.

Section 7.11 Confidentiality.

(A) Hearings and Conferences: All hearings and conferences under this Code shall be closed to the public. Only the Presenting Officer, the Youth Court Judge, the Indian Child Welfare Worker, the tribal law enforcement officer(s), and the parties to the action shall be permitted at the hearings and conferences; provided that the parties may agree to allow the presence of other persons. Any person asked to testify or speak shall be permitted at the hearings and conferences but only for the limited purpose of giving testimony or presenting evidence.

(B) Records: All conference, hearing, and law enforcement records and files under this Code shall be confidential and shall not be open to inspection to any but the following, except as may be ordered by the Youth Court in the youth's best interest:

- (1) The youth and his or her legal representative.
- (2) The parent, guardian, or custodian.
- (3) The Indian Child Welfare Worker.
- (4) The Presenting Officer.

(C) A Judge of the Youth Court shall review all requests for access to closed records and in no case shall closed records be opened to others without such review and written approval of the Youth Court Judge.

(D) Law enforcement records and files under this Code concerning a youth shall be kept separate from the records and files of adults.

Section 7.12 Service.

(A) Service: Except as otherwise expressly provided in this Code, every pleading, motion, notice and similar paper which is required or permitted to be served upon a person shall be given in the following manner:

- (1) By personally delivering a copy to him/her by handing it to his/her counsel or to the person to be served; or by leaving it at his/her office with a secretary or other person; or if the person to be served has no office, leaving it at his/her dwelling place or usual place of residence with some person of suitable age and discretion then residing therein; or
- (2) If personal service cannot be made, then by certified mail, return receipt requested, postage prepaid, and properly addressed to the last known residence of the person to be served. Service by mail shall be made by the Court Clerk.
- (3) In the event that service can not be made, or is refused, a record of attempts of service shall be made a part of the file maintained by the Court Clerk.
- (4) Delivery of all documents on behalf of the Tribe will be made at the discretion of the court. Personal service off the reservation may be made by others.

(B) Designated Tribal Agent For Service Of Notice: The designated tribal agent for service of notice of proceedings pursuant to 25 C.F.R. 23.12 shall be the Court Clerk.

Section 7.13 Continuances

(A) When to Order: Except as otherwise expressly provided, the Court may continue any proceeding:

- (1) Upon the motion of a party if there is a finding that good reason exists for the continuance, including time to insure proper notice or to produce material evidence or witnesses currently unavailable; or
- (2) Upon the Court's own motion if it considers it to be in the best interest of the youth.

(B) Effect: A continuance suspends the time limits for the holding of hearings and the filing of documents.

Section 7.14 Contempt.

(A) Definition: Any willful disobedience or interference with any lawful order or process of the Court shall constitute contempt.

(B) Punishment: The Court may punish any person for contempt pursuant to Stockbridge-Munsee Tribal Law, Chapter 1, Section 1.15.

(C) Bench Warrant: A Youth Court judge may issue a warrant for a person's arrest for contempt upon failure to appear at any ordered conference or hearing either in person or by legal representative, such warrant shall be issued in accordance with Stockbridge-Munsee Tribal Law, Chapter 1, Section 1.16.

Section 7.15 Rights of Parties.

(A) Rights: All parties are entitled to the following rights in all proceedings under this Code.

- (1) A statement by the Youth Court to the youth and his or her parent, guardian or custodian that they have the right to have a legal representative advise and represent them, at their expense. A party may request a continuance of a proceeding in order to seek legal representation.
- (2) The opportunity to subpoena witnesses.
- (3) The opportunity to introduce, examine and cross-examine witnesses.
- (4) The opportunity to discover, offer and inspect evidence.
- (5) The opportunity to present arguments and statements.

(B) Jury Trial: There is no right to trial by jury during any proceeding under this Code.

Section 7.16 Appeal.

(A) Record: For purposes of appeal, a record of the proceedings shall be made available to the youth, his or her parent, guardian or custodian. Costs of obtaining this record shall be paid by the party seeking appeal unless waived by the court.

(B) Time Limit: Any party to a proceeding under this Code may appeal a final order or disposition of the case by filing a written notice of appeal with the Youth Court within thirty (30) days of the final order or disposition.

(C) Conduct of Proceeding: All appeals shall be conducted in accordance with Stockbridge-Munsee Tribal Law, Chapter 1, Section 1.30, except as modified in this Chapter.

Section 7.17 Full Faith and Credit.

(A) The Youth Court shall give full faith and credit to state and other tribes' custody court orders if the Court granting the order had jurisdiction over the case and the order does not violate the public policy of the Stockbridge-Munsee Tribe.

Section 7.18 Amendments; Severability and Non-liability.

(A) Amendments: Amendments to this Code will be effective upon enactment by the Stockbridge-Munsee Community Tribal Council without further review by the Secretary of Interior.

(B) Severability and Non-Liability: If any section, provision, or portion of this Code is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Code will not be affected thereby. The Tribe declares there is no liability on the part of the Tribe, its agencies, or employees for damages that may occur as a result of reliance upon or conformance with this Code. The Stockbridge-Munsee Tribe, by adoption of this Code, does not waive sovereign immunity in any respect.

Section 7.19 Effective Date.

This Code, duly adopted by Council Resolution #1104, Sept. 20, 1988, shall take effect the ____ day of _____, 19____.