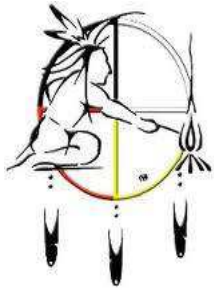


FOREST COUNTY POTAWATOMI TRUANCY ORDINANCE

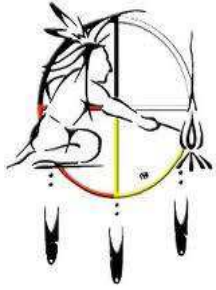
CHAPTER 3-5 (05/09/2015)



FOREST COUNTY POTAWATOMI TRUANCY ORDINANCE

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FOREST COUNTY POTAWATOMI TRUANCY ORDINANCE

§ 1. General

1.1. Purpose

This purpose of this ordinance is to require regular school attendance for all tribal member Children who are school-aged and attend a primary or secondary school. The Family Service Division is required to assist families in correcting truant behavior. Forfeitures and other sanctions may be assessed to any Children or parents who violate this ordinance. If a Child's unexcused absences exceed the maximum allowed per school year, the Tribal Prosecutor may petition the Tribal Court alleging a Child is in need of protective services from the Tribal Community.

1.2. Authority

The Forest County Potawatomi Community enacts this ordinance pursuant to its authority under Article IV §1 (d) of the Tribal Constitution.

1.3. Effective Date and Title

This ordinance is hereby adopted immediately following the Supermajority approval of the Forest County Potawatomi General Council and it shall be known as the Forest County Potawatomi Truancy Ordinance.

1.4. Sovereign Immunity

The Tribe, by adoption of this ordinance, does not waive its Sovereign Immunity in any respect.

1.5. Amendment or Repeal

This ordinance may be amended or repealed only by a Supermajority vote of the Forest County Potawatomi General Council. All rules and regulations heretofore adopted by the Forest County Potawatomi General Council which are in conflict with the provisions of this ordinance are hereby repealed.

1.6. Jurisdiction

The Forest County Potawatomi Tribal Court shall have Original Jurisdiction over all proceedings under this ordinance.

§ 2. Definitions

For the purpose of this ordinance, the following words and phrases shall have the meanings given to them in this Section and by law:

“Adult” shall mean any person who is of 18 years age or older.

“Child” or “Children” shall mean all Indian Children between the ages of five to seventeen (5-17) who live on Tribal Lands and all Children who are enrolled members of the Tribe or eligible to be enrolled between the ages of five to seventeen (5-17), who live on or off Tribal Lands or the reservation and who attend a primary or secondary School.

“CHIPS” shall refer to a Child in Need of Care. The Tribal Prosecutor may file a CHIPS petition through Tribal Court when a Child is in Need of Care due to neglect, abuse, habitual truancy and any other applicable situations which merit court action.

“Guardian” shall mean a person appointed by Tribal Court to protect the legal interests and care of a Child and/or Children in a particular case before the Court.

“Habitually Truant” or “Habitual Truancy” shall mean being absent from School without an acceptable excuse pursuant to School policy for all or part of three (3) or more days within a ten (10) day period or ten (10) total Truancies within a semester or 90 days, whichever is less.

“Indian Child Welfare Worker” shall mean a person employed by the Forest County Potawatomi Tribal Executive Council to carry out the duties, objectives, and provisions of the Children’s Code; but subject to the limitation of the Tribal Court Code. The Indian Child Welfare Worker shall have the authority and duty to:

- (A) Receive and examine complaints and allegations that a Child and/or Children is a Child in Need of Care for the purpose of determining the appropriate proceedings under the Children’s Code.
- (B) Make investigative reports and recommendations to the Court.
- (C) Make appropriate referrals of cases to other agencies if their assistance appears to be needed or desirable, except there shall be no referral to a state government without advance approval in writing from a Tribal Judge.
- (D) Provide Child and/or family counseling and any other function designated by the Court.
- (E) Identify and develop resources within the communities as designated by the Court.
- (F) Make predisposition reports and recommendations to the Court.
- (G) Supervise and assist a Child and/or Children placed on probation.

“Judge” shall mean a judge of Tribal Court who shall have the authority and duty to determine a course of action which is least restrictive to the Child's freedom and is consistent with the objectives of the Children’s Code; but subject to its limitations, Tribal Court Judges shall have the authority and duty to:

- (A) Advise the Child and the parent, guardian or custodian of their rights;
- (B) Appoint counsel for a Child, parent, guardian, or custodian if necessary under this Code;
- (C) Order that a Child be taken into custody pursuant to the Children’s Code;
- (D) Order the applicable Law Enforcement Officer of Tribal Court to conduct a preliminary inquiry calculated to identify and resolve problems present in complaints filed in Tribal Court;
- (E) Cooperate and participate with any federal, state, private or Tribal agency providing rehabilitative or social services designed to assist a Child to become a viable adult member of the community.
- (F) Exercise other powers as permitted under this ordinance and tribal law.

“Kindergarten” shall mean a program or class for children prior to first grade that serves as an orientation for school by accustoming them to a new social environment through varied experiences planned to develop manipulative skills, motor coordination, and social awareness.

“Parent(s)” shall mean any person acting in place of a guardian in a court appointed placement.

“Protective Services” shall mean a child welfare program which seeks to prevent dependency and abuse of Children by providing family services to families where unresolved problems have created visible signs of dependency or abuse and the home situation presents actual and potential hazards to the physical or emotional well-being of Children.

"School" shall mean any primary or secondary school and any other accredited schools including any educational alternatives and kindergarten which are at the tribe’s disposal.

“School Attendance” shall mean the physical presence of a Child and/or Children within regular school hours and includes attending scheduled classes during scheduled hours for any particular student.

“School Attendance Policy” shall mean the current policy set in place by the particular school the Child and/or Children attends.

“Supermajority” shall mean seventy five percent (75%) of the annually established quorum of the Forest County Potawatomi General Council.

"Tribal Court" shall mean the Forest County Potawatomi Community Tribal Court.

“Tribal Lands” shall mean any lands, the legal title to which is held in trust by the United States for the benefit of the Forest County Potawatomi Community and any other land which is part of the Forest County Potawatomi Community Reservation.

“Tribal Member” or “Member” shall mean any person who is an enrolled member of the Forest County Potawatomi Community.

"Tribe" shall mean the Forest County Potawatomi Community.

“Truancy Prevention Specialist” or “Designee” shall mean a person that is employed with Forest County Potawatomi Community who is responsible for monitoring the attendance of a Child. The Specialist must also work cooperatively with the School District, Tribal Court and County Court.

“Truant” or “Truancy” shall mean being absent for all or part of one (1) or more regularly scheduled School day(s) without an acceptable excuse pursuant to School policy. It also means intermittent attendance carried on for the purpose of defeating the purpose of this ordinance.

§ 3. Applicability

3.1. This ordinance applies to all Tribal member Children who reside on or off Tribal Lands, and who are enrolled in classes, a primary or secondary school, and/or any alternative educational programs. This ordinance also applies to any person acting as a parent, guardian or foster placement for such a Child by order of the court.

3.2. Any noncompliance within this ordinance shall be subject to court action and/or fines.

§ 4. Truancy, Habitual Truancy, and Contributing to Truancy Prohibited

4.1. The Tribal Court, in its discretion, may recognize alternative methods of complying with this compulsory attendance requirement, such as those found at Wis. Stat. §118.15 or any successor statute thereto.

4.2. It is prohibited for any Child to be Truant or Habitually Truant from School.

4.3. It is prohibited for any person seventeen (17) years of age or older to knowingly encourage or contribute to the Truancy of any Child.

4.4. A citation may be issued for each violation of this ordinance at the discretion of the Tribal Prosecutor.

§ 5. Family Services

The Forest County Potawatomi Family Service Division-ICW unit shall process all CHIPS referrals received through the Truancy Prevention Specialist and make any additional referrals deemed necessary to provide any tribal services including education support which may be

beneficial to Children in need. When Truancy or Habitual Truancy occurs, Family Services shall immediately hold a meeting with the parent or guardian and the Child to discuss the truancy and attempt to correct the behavior. If the unexcused absences continue to occur, Family Services shall forward the most current, unexcused absence attendance records to the Tribal Prosecutor within two (2) working days for the issuance of a citation.

§ 6. Educational and Cultural Services

6.1. A Truancy Prevention Specialist or Designee shall provide tribal educational support services for any Child in need as a result of truant behavior. Services are determined by a Truancy Prevention Specialist and may be deemed required through Tribal Court. Services may include and are not limited to the following:

- (A) Educational Support Services for alternative education, tutoring, special education needs, counseling and mentoring as well as other family services deemed fit.

6.2. Educational Opportunities may include the following:

- (A) Juvenile work programs which may or may not be court ordered. This may include job shadowing, college tours, paper writing, and job related project work as well as other programs deemed fit.

6.3. Truancy Prevention Plan

- (A) If a Truancy Prevention Specialist or Designee has received a referral for an evaluation of a Child, the evaluation must be completed within five (5) days of receiving the referral.
- (B) The Truancy Prevention Specialist must also work with the Child and any person in loco parentis to the Child to complete a Truancy Prevention Plan. The Child and Parents shall remain compliant with this plan.

§ 7. Court Trial and Citations

7.1. The Truancy Prevention Specialist may make a referral to the Tribal Prosecutor. The Tribal Prosecutor may issue citations at his or her discretion and/or in severe cases, file a Child In Need of Protection action in Tribal Court.

- (A) If the Truancy Prevention Plan is not followed by either the Child or the Parents, the Truancy Prevention Specialist shall make a referral to the Tribal Prosecutor who may issue a citation, or in the case of habitual truancy, may initiate a Child In Need of Protection action in Tribal Court.

7.2. Contesting a Citation

- (A) A request to contest the citation shall be filed with Tribal Court no later than ten (10) days after receiving the citation. Such deadline shall be prominently displayed on the Notice.
- (B) Contested citations shall be heard by Tribal Court no later than two (2) weeks from the request. The hearing may commence immediately with the consent of the parties and Tribal Court.
- (C) The burden of proof is upon the Tribe and shall be by clear and convincing evidence.
- (D) The Tribal Court may suspend court rules and allow for informal court proceedings.

§ 8. Penalties

8.1. Any penalty imposed as a result of the hearing shall be monetary or in the form of work duty or at the discretion of a Tribal Judge. Monetary penalties may be up to the limits of applicable law. The penalties will be per offense, not per person.

8.2. Monetary penalties, Work duty penalties and Orders

- (A) A parent or guardian whose Child is Truant shall forfeit a monetary judgment of not less than one hundred dollars (\$100.00).
- (B) A person in violation of any section of this ordinance shall forfeit a monetary judgment of not less than four hundred dollars (\$400.00).
- (C) Upon a finding that a Child is Habitually Truant, Tribal Court may enter an order making one or more of the following dispositions:
 - (1) Order the Child to attend School with no unexcused absences.
 - (2) Order the Child to forfeit the sum of not less than ten dollars (\$10.00).
 - (3) Order the Child to be under a curfew and other restrictions as Tribal Court sees fit.
 - (4) Order the Child to attend a hearing in front of the Family Service Impact Panel.
 - (5) Order the Child to participate in counseling with or without the parent or guardian.
 - (6) Order community service work or a supervised work program and order the Child to pay all costs associated.

- (7) Suspend the Child's motor vehicle operating privilege, as defined in Wis. Stat. §340.01(40) or any successor statute thereto, for not less than thirty (30) days but not more than ninety (90) days. The judge shall immediately take possession of the suspended license and forward it to the Wisconsin Department of Transportation together with a notice stating the reason for and duration of the suspension.
- (8) Order the Child to attend an appropriate educational program including, if necessary, entry into a residential treatment facility. (For reference see Wis. Stat. §48.345(12) (13) or any successor statute thereto).
- (9) Order the revocation of the Child's work permits.
- (10) Order Secure Detention for the Child and require the parent or guardian to pay all costs associated.
- (11) Order a monetary forfeiture judgment against the parent or guardian of not less than four hundred dollars (\$400.00).
- (12) Order the parent or guardian to attend School with the Child.
- (13) Order the parent or guardian to participate in counseling at their expense.
- (14) Order the cost of the Child's counseling, community service work or supervised work program against the parent or guardian.
- (15) Order the Child to complete community service which shall be assigned according to the severity of the incident.
- (16) Order the Child to participate in a settlement conference with the Truancy Prevention Specialist or Designee for resolution to truant behavior.
- (17) Any other sanctions or disciplinary proceedings that Tribal Court sees fit and justified.

§ 9. Monetary Enforcement

9.1. Monetary forfeiture judgments under this ordinance are Tribal Court judgments and shall be enforced in accordance with the Debts Owed to the Tribe Ordinance. If the judgment is against an employee of the Forest County Potawatomi, the court may order a garnishment of wages. If the judgment is against a tribal member, the court may order a garnishment of per capita payments.

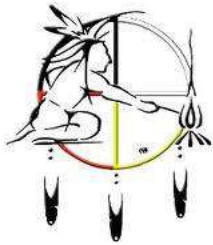
9.2. Any fines collected pursuant to the ordinance shall be deposited in the appropriate Court Services budget line item.

§ 10. Petition; Child In Need of Care

10.1. In the case of Habitual Truancy in any School year, the Tribal Prosecutor may file a CHIPS petition at his or her discretion, alleging that the Child is in need of care or services pursuant to Tribal law. The dispositions listed in §8.2 shall also be available to the court in a CHIPS case in addition to the regular CHIPS remedies.

05232013

Legislative History for Forest County Potawatomi Truancy Ordinance:



Recommended by the Ordinance Department	01/11/2008
Approved by Executive Council	01/11/2008
Ordinance pulled from General Council for revision.....	12/15/2010
Recommended by the Ordinance Department	05/06/2015
Approved by Executive Council	05/06/2015
Approved by General Council	05/09/2015