

**Yurok Tribal Code, Family**

**YUROK TRIBE CHILDREN’S ORDINANCE**

*Pursuant to its authority under Article IV, Section 5 of the Yurok Constitution, as certified on November 24, 1993, the Yurok Tribal Council hereby enacts the following ordinance to express the Tribe’s sovereign right to protect future generations and affirming the Tribe’s intent to handle all matters of child welfare internally and according to Yurok culture, tradition, and family values.*

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## **GENERAL PROVISIONS**

### **SECTION 1001. Short Title**

This ordinance shall be referred to as the “Children’s Ordinance.”

### **SECTION 1002. Purpose**

The Preamble to the Yurok Constitution states that: “Our social and ecological balance, thousands and thousands of years old, was shattered by the invasion of the non-Indians. We lost three-fourths or more of our people through unprovoked massacres by vigilantes and the intrusion of fatal European diseases. The introduction of alcohol weakened our social structure, as did the forced removal of our children to government boarding schools, where many were beaten, punished for speaking their language, and denied the right to practice their cultural heritage.” Although the era of removal and placement in government boarding schools has passed, a new and more pervasive means of taking our children from us and furthering the breakdown of Yurok culture and spiritual beliefs has arisen. Judicial systems introduced to our culture by non-Indians seek to impose foreign standards of child rearing unknown to the Yurok people and our way of life. Traditionally, a child of the Yurok Tribe was raised collectively by the entire village. Participation in Yurok culture and ceremonial life was a person’s duty and responsibility. The foreign values imposed upon us by an outside system fail to honor and respect our duties and responsibilities.

The Yurok Constitution was adopted to: “Preserve forever the survival of our tribe and protect it from forces which may threaten its existence... Uphold and protect our tribal sovereignty which has existed from time immemorial and which remains undiminished... Preserve and promote our culture, language, and religious beliefs and practices, and pass them on to our children, our grandchildren, and to their children and grandchildren on, forever... Provide for the health, education, economy, and social well-being of our members and future members....” By adopting this Yurok Children’s Ordinance, we clearly express our sovereign right to protect future generations and hereby affirm the Tribe’s intent to handle all matters of child welfare internally and according to Yurok culture, tradition, and family values.

### **SECTION 1003. Scope**

The jurisdiction of the Yurok Tribal Court and the effective scope of this Ordinance shall minimally include, but not necessarily be limited to: all Yurok Tribal members, both present and future, any children of a Yurok Tribal member, all territory within the Yurok Indian Reservation, as defined by Article I of the Yurok Tribal Constitution, including but not necessarily limited to, all real property including fee patents, allotments, assignments; all roads, waters, and bridges used or maintained for Tribal purposes, and existing and future lands outside the boundaries of the currently federally recognized Reservation owned or controlled by the Yurok Tribe for the benefit of its members.

The Courts of the Yurok Tribe shall have jurisdiction over all cases arising under the provisions of this Ordinance and all cases arising under the provisions of any state or country that arise under that jurisdiction’s codes as related to any provision related to child dependency, foster care, guardianship, and/or adoption which shall arise involving any child which is or may be eligible for enrollment in the Yurok Tribe. Further, this jurisdiction will extend to any child of a Tribal member even if that child may not necessarily be a candidate for enrollment with the Tribe at the time of the proceedings.

All cases of child dependency, foster care, guardianship, and/or adoption involving the minor children of any member of the Yurok Tribe which may arise outside the Yurok Reservation are subject to the assertion of concurrent jurisdiction by the Yurok Tribal Court and until such time as the retrocession of Public Law 82-280 shall be subject to the provisions of the Indian Child Welfare Act allowing for transfer of said case to the Yurok Tribal Court.

**SECTION 1004. Sovereign Immunity Preserved**

Except as judicial review is authorized in this Ordinance, and in accordance with the Yurok Tribe's Supreme Ordinance, nothing in this Ordinance shall be interpreted as a waiver of the Tribe's sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages against the Tribe.

**SECTION 1005. Severability**

If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or application of its provisions to other persons or circumstances shall not be affected, and to this end, the provisions of this ordinance are severable.

**SECTION 1006. Effective Date**

This Ordinance shall take effect immediately after its adoption by Council.

**SECTION 1007. Repeal of Conflicting Ordinance Provisions**

All prior Ordinance provisions previously enacted by the Tribal Council and inconsistent with the provisions of this Ordinance are hereby repealed. If the provisions of this Ordinance conflict with the provisions of any other previously enacted ordinance, the provisions of this ordinance shall control.

**SECTION 1008. Definitions**

For the purpose of this ordinance, the terms defined in this section have the meanings given in this section.

- (a) *Abandonment of child/infant* means when a parent or caretaker has shown conscious disregard of parental responsibilities toward the child by failing to provide reasonable support, maintain regular contact, or provide supervision, according to the child's age and needs. The term "abandonment" includes when a parent or caretaker has shown conscious disregard of parental responsibilities toward the child by failing to provide reasonable support, maintain regular contact, or provide normal supervision, considering the child's age and needs.

The Tribe adopts the concept of California's Safely Surrendered Baby provisions in that specifically said "surrender" of a Yurok Infant by a Yurok parent may take place by bringing the infant to the offices of Yurok Social Services (YSS), Yurok Public Safety and/or the Yurok Tribal Court. The infant will be conveyed to YSS for immediate care and detention consistent with the infant's needs.

A finding of abandonment requires that the parent/guardian/caretaker has been

given notice and opportunity to redress the abandonment and is found to be or states they are unwilling or unable to redress the problem and seeks the intervention of the court to insure the welfare of the child. If the court makes the finding of abandonment then the court will establish a parental figure and/or placement plan for the child.

Abandonment of a child also includes instances when the parent or caretaker unjustifiably:

- (1) Leaves the child with another person without provision for the child's support and without meaningful communication with the child for a period of three (3) months;
- (2) Intentionally leaves the child without affording means of identifying the child and the child's parent or caretaker;
- (3) Is absent from the home for a period of time that creates a substantial risk of serious harm to a child left in the home;
- (4) Failed to respond to notice of child protection proceedings; or
- (5) In the case of a non-custodial parent:
  - (A) Makes only minimal efforts to support and communicate with the child;
  - (B) Fails to maintain regular visitation with the child for a period of six (6) months; or
  - (C) Fails to participate in a suitable plan or program designed to reunite the parent with the child.

(b) *Abandonment of child/infant* does not mean where a parent or caretaker:

- (1) Places his or her child with an extended family member;
- (2) Acts or fails to act in a manner that would constitute abandonment except the parent or caretaker, or a child in his or her care, is a victim of domestic violence and the action or failure to act is necessary to protect the parent, caretaker, or child in his or her care, from further acts of domestic violence. If the parent or caretaker does not take reasonable steps to reunify with or provide care for the child after becoming secure from further acts of domestic violence, the child may be considered abandoned;
- (3) Has established an Indian Custodianship;
- (4) Has been deployed as an active member of the military;
- (5) Has been incarcerated or is medically or psychologically incapacitated; or
- (6) Has taken off-reservation employment and/or schooling opportunity and has not been personally notified of the failure of an existing care plan for a child.

(c) *Adoption* means the establishment by this court, the legal relationship between persons who are not so related by birth, with the same mutual rights and obligations that exist between children and their birth parents. This relationship can only be

termed “adoption” after the legal process is complete provided for under this Ordinance. An adoption of another jurisdiction will be recognized by the Yurok Court so long as the laws of that jurisdiction have been followed.

- (d) *Advisor to Tribal Court* means the family member, elder, or other known person the Parent(s)/Guardian/Caretaker nominates to act as an advisor to the court, or a person the court nominates to serve this role for the family. The advisor’s role is not designed to replace a parent’s advocate but is to help the court reach a disposition in each case that is consistent with the purposes of this Ordinance to protect Yurok children’s right to an upbringing consistent with Yurok cultural imperatives and the rights of each Yurok child to a loving and protected upbringing. For that purpose the advisor is allowed to address the court with a non-binding recommendation or, with the permission of the parties, address the court in chambers in an unreported hearing for the purposes of making non-binding recommendations.

The advisor may be excused by the court if the advisor ceases to function in a manner that is helpful to the court or the court process.

- (e) *Aggravated Circumstances*. YSS must provide active efforts to prevent the breakup of a Yurok family and a removal of a child from the home of the parents unless the Court makes a finding that such efforts are not required in the case. Active efforts to preserve or reunify the family are not required when the court has found “aggravated circumstance.” Aggravated circumstances as defined in this Ordinance shall consist of those circumstances identified the California Welfare and Institutions Code § 361.5(b).
- (f) *Caretaker* means any person with the responsibility of caring for or safeguarding any child and is recognized by the child’s family and/or community as having such responsibilities. A caretaker for purposes of this Ordinance includes an Indian Custodian.
- (g) *CASA* means Court Appointed Special Advocate, a volunteer appointed by the Court to represent the individual needs of the CINA.
- (h) *CINA* means Child In Need of Aid. The court may find a child to be a Child In Need of Aid (“CINA”), as result of actions taken which are contrary to the child’s welfare, if it finds by a preponderance of the evidence that the child has been , subjected to, or is at substantial risk of being subjected to, conditions which inflict upon the child or place the child in danger of physical, mental, or emotional harm, including:
- (1) The parent/guardian/caretaker has abandoned the child, and the other parent is absent or unable to care for the child, or has committed conduct or created conditions that willfully or negligently fail to provide for or protect the child such as to cause the child to be a CINA under this Ordinance;
  - (2) The child has been neglected; due to the failure of the parent/guardian/caretaker, to provide the child with adequate, food, clothing, shelter, or medical treatment or by the inability to care or provide for the child due to the parent/guardian/caretaker’s mental illness developmental disability or substance abuse;

- (3) The child has suffered medical neglect;
- (4) The child is a habitual runaway;
- (5) The child has suffered physical abuse, or there is substantial risk that the child will suffer physical abuse;
- (6) The child has suffered sexual abuse, or there is substantial risk that the child will suffer sexual abuse;
- (7) The child is determined to have been a commercially sexually exploited child.
- (8) The child has suffered emotional damage or mental injury, or there is substantial risk that the child will suffer emotional damage or mental injury as the result of the conduct of the parent/guardian/caretaker, or has not parent/guardian/caretaker capable of providing appropriate care for the child.
- (9) The parent/guardian/caretaker ability to parent has been substantially impaired by the addictive or habitual use of an intoxicant, or the addictive or habitual use of an intoxicant has resulted in a substantial risk of harm to the child; and/or
- (10) The parent/guardian/caretaker has a mental illness, serious emotional disturbance, serious physical disability, or mental deficiency of a nature and duration that places the child at substantial risk of harm.
- (11) The child's sibling has been abused or neglected as defined in this section and there is substantial risk that the child will be abused or neglected, based on the circumstances of the prior abuse, the age of the child, and any other factors the court considers probative in the determination of whether there is substantial future risk to the child.
- (12) The child is a Safely Surrendered Infant.

It is not the intention that this definition be used to interfere with or prohibit the cultural and spiritual development and traditional child-raising practices of the child's family or Tribe.

- (i) *Concurrent Jurisdiction* means that this Court may assume concurrent jurisdiction with any non-Yurok court upon a specific request by YSS that sets forth a specific case plan and terms of said request. This Court may also, pursuant to a request from YSS, concurrently work with any Wellness Court requirements, and or allow the provisions of any YSS case plan to be adopted as Wellness Court requirements. Information sharing to carry out the objectives of concurrent jurisdiction are anticipated and hereby allowed.
- (j) *Court* means the Yurok Tribal Court, unless otherwise specified.
- (k) *Date the Child Entered Foster Care* means the date that is the earlier of the first judicial finding of child abuse or neglect (the jurisdiction finding) or 60 days after the child is physically removed from the home of the parent, guardian or caretaker. *See* 42 U.S.C. § 675(5)(F).
- (l) *Delinquent Child* means a child who has previously been adjudicated a delinquent by a

non-Yurok court of competent jurisdiction or who has been adjudicated a delinquent pursuant to any delinquency ordinance enacted by this Tribe.

- (m) *Extended family or relative* means a person who is the minor's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent, or is recognized by traditional village custom and/or practice as an extended family member.
- (n) *Guardian* means the relationship established between a child and a caretaker in a Legal Guardianship.
- (o) *Indian Custodian* means an Indian person who has custody of an Indian child but is not that child's biological parent, who has the right and responsibility to make decisions about a child's day-to-day care, well-being, and overall best interests, and has special rights under the Indian Child Welfare Act, 25 U.S.C. § 1901 et al.
- (p) *Legal Guardianship* means a judicially-created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making.
- (q) *Protective Parent(s)* is a caretaker established by the Court when a child is the subject of a prospective Adoption under this Ordinance, and to whom the Court assigns custody and responsibility for care of the child including authority to consent to the medical care and treatment of the child, and to otherwise have those rights of a biological parent of the child, including protection, education care and control of the person, and decision making on behalf of the child pending the finalization of the Adoption.
- (r) *"Reasonable and prudent parent" or "reasonable and prudent parent standard"* means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a Protective Parent, Guardian or Caretaker shall use when determining whether to allow a child under the jurisdiction of the Yurok Tribal Court pursuant to this Ordinance to participate in extracurricular, enrichment, cultural, and social activities.
- (s) *Relative*. See *Extended Family or relative*
- (t) *Responsible Agency* means Yurok Social Services ("YSS") and/or Yurok Public Safety.
- (u) *Safely Surrendered Infant* means an infant 72 hours of age or younger whose parent gives up control of the infant by an act coupled with an intention to knowingly surrender such control to the YSS, Yurok Public Safety and/or the Yurok Tribal Court and where the parent does not re-claim the infant within 14 calendar days. The knowing intention to surrender control may be demonstrated by execution of a form confirming knowing and willing surrender of the child and by the failure to reclaim the child within 14 days after the surrender.
- (v) *Sibling* means one or more individuals who share a common parent.
- (w) *Voluntary Placement* means and out of home placement of a child by the YSS after the child's Parent/Guardian/Caretaker requested the assistance of YSS and has

agreed, by signing a Voluntary Placement Agreement, to the placement of a child in an out-of-home placement for a period of no longer than 180 days.

- (x) *Voluntary Placement Agreement* means a written agreement binding on YSS and any Parent, Guardian, or Caretaker which:
  - (1) Specifies the legal status of the child and the rights and obligations of the Parent(s), Guardian(s) or Caretaker(s); the child; and YSS while the child is in out-of-home placement;
  - (2) Is requested by the Parent(s), Guardian(s) or Caretaker(s);
  - (3) Is signed by all parties including YSS; and
  - (4) May be revoked if the Parent(s), Guardian(s) or Caretaker(s) request that the child be returned home or to the home of a specified relative unless YSS opposes such request and obtains a judicial determination that the return of the child to such home would be contrary to the child's welfare and can last no longer than 180 days.
- (y) *Voluntary Services*. With the agreement of YSS, a Yurok parent or other person, who the Court has jurisdiction over pursuant to this Ordinance, may seek the assistance of YSS and enter into a voluntary service plan pursuant to the provisions of this
- (z) *Withholding medically indicated treatment* means where a parent or other caretaker fails to respond to a child's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, which, in the treating physician's or physicians' reasonable medical judgment will be most likely to be effective in improving or correcting all such conditions, except that the term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to a child when, in the treating physician's or physicians' reasonable medical judgment—
  - (1) the child is chronically and irreversibly comatose;
  - (2) the provision of such treatment would—
    - (A) merely prolong dying;
    - (B) not be effective in improving or correcting all of the child's life;
    - (C) threatening conditions; or
    - (D) otherwise be futile in terms of the survival of the child; or
  - (3) The provision of such treatment would be virtually futile in terms of the survival of the child and the treatment itself under such circumstances would be inhumane.

Notwithstanding the above, if, in the judgment of the child's parent or caretaker, or in the absence of the Parent or Caretaker other Guardian entrusted with the wellbeing of the child, there are available culturally appropriate and acceptable, by applicable community standards, alternative methods of healing available to the child, the parents and or caretaker may employ those culturally acceptable alternative methods of healing.

- (aa) *Yurok Child* means for the purposes of this Ordinance, any minor that has not yet attained 18 years of age who is the child of a present or deceased Yurok Tribal member including any adopted child of such a member.
- (bb) *YSS* means the Department of Yurok Social Services.

## **CHAPTER 1. VOLUNTARY PETITION FOR SERVICES**

### **SECTION 1101. Authority**

Where a minor's Parent/Guardian/Caretaker requests the assistance of the YSS because the child may be a CINA, the YSS has the authority to provide services to prevent the filing of a CINA petition and/or to accept the voluntary placement of the child with the written consent of the Parent/Guardian/Caretaker as demonstrated by a Voluntary Placement Agreement.

The YSS, as soon as possible but no later than 14 days from when the request is made, shall hold an informal conference with at a minimum the minor's Parent/Guardian/Caretaker to discuss alternatives to the filing of a CINA petition if:

- (a) The alleged facts that could bring the child within the case within the jurisdiction of the Court as a CINA;
- (b) The informal resolution of the matter would be in the best interests of the child and the Tribe; and
- (c) The child and the child Parent/Guardian/Caretaker request services which will be provided through a case plan designed to resolve the presenting problems and prevent the filing of a CINA petition.
- (d) Nothing prevents the execution of a Voluntary Placement Agreement pending the holding of the informal conference.

This section does not authorize YSS to compel any person to appear at any such informal conference, produce any papers, or visit any place. Any disposition reached at an informal conference must be agreed to by all parties responsible for carrying out the disposition. However, failure to appear at the informal conference or engage in services may result in the filing of a formal CINA petition in tribal or dependency petition in state court.

### **SECTION 1102. Notice**

Notice of the informal conference shall be given to the minor and his or her Parent/Guardian/Caretaker as soon as the time for the conference has been established. The notice shall contain a brief statement of the alleged circumstances upon which the CINA allegation is based.

### **SECTION 1103. Disposition**

- (a) At the informal conference, YSS may:
  - (1) Refer the child and the child's Parent/Guardian/Caretaker to an available program or service provider for needed assistance;
  - (2) Arrange terms, goals for a family case plan under the supervision of YSS;

- (3) Enter into a written Voluntary Placement Agreement; if one has not already been executed or
  - (4) Recommend that the petition for removal pursuant to Chapter 5 of this Ordinance be initiated.
- (b) YSS shall set forth in writing the conclusions reached at the informal conference and the disposition agreed to by the parties for remedying the situation.
  - (c) Any informal voluntary service period shall not exceed a reasonable period of time, and must be consistent with the best wishes of the child.
  - (d) Any voluntary placement in excess of 180 days may be authorized by a finding that the placement is in the best interests of the child, obtained prior to the 180<sup>th</sup> day of the child's placement.
  - (e) Any case plan or voluntary placement of a child pursuant to this section shall be subject to another informal conference.
  - (f) Eligibility for Kinship Guardianship Assistance Payment Program should be assessed where the child is placed with a relative.

**SECTION 1104. Revocation**

The parent can withdraw the request or terminate the Voluntary Placement Agreement with a seven (7) day notice to YSS.

**CHAPTER 2. ABUSE**

**SECTION 1201. Physical Abuse**

For the purposes of this Ordinance, the term “physical abuse” includes where a parent or other caretaker inflicts, causes another to inflict, or fails to make reasonable efforts to prevent the infliction of physical injury upon a child when the parent or caretaker knows or reasonably should know that a child is in danger of physical abuse.

- (a) The term “physical injury” includes, but is not limited to, any case in which:
  - (1) The child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture, sprain or dislocation of any bone, subdural hematoma, soft tissue swelling, lacerations, disfigurement, impairment of bodily organs or functions, severe pain, or intentional overdosing or withholding of prescription medications or administration of illegal drugs or alcohol; and
  - (2) Such condition is not justifiably explained, is not the product of an accidental occurrence, or within the parameters of cultural or religious practices.
- (b) The term “physical abuse” does not include discipline administered by a parent or other caretaker to a child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty, within applicable Yurok tribal standards.

## **SECTION 1202. Sexual Abuse**

For purposes of this chapter, the term “sexual abuse” includes where a parent or other caretaker employs, uses, persuades, induces, entices, or coerces a child to engage in, or assists another person to engage in, sexually explicit conduct or the rape, statutory rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children. The term also includes where a parent or caretaker fails to make reasonable efforts to protect the child from sexual abuse when the parent or caretaker knew or reasonably should have known that the child was in danger of sexual abuse.

- (a) The term “sexually explicit conduct” includes, but is not limited to, actual or simulated:
  - (1) Sexual intercourse, including sexual contact in the manner of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or of opposite sex; sexual contact means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person;
  - (2) Bestiality;
  - (3) Masturbation;
  - (4) Lascivious exhibition of the genitals or pubic area of a person or animal; or
  - (5) Sadistic or masochistic abuse; or
  - (6) Exposure to pornographic materials for the purposes of sexual gratification of the parent, caretaker or another third party.
- (b) The term “sexual exploitation” includes, but is not limited to:
  - (1) Knowingly permitting or encouraging a child to engage, in any way, in prostitution or live sexual performance, or to display his or her genitals for the sexual gratification of the parent, caretaker, or third person; or
  - (2) Knowingly permitting or encouraging a child to engage, in any way, in the production of pornographic material, including the visual depiction of the child engaged in sexually explicit conduct, whether for commercial or personal purposes.
- (c) Commercial sexual exploitation means the sexual trafficking of a child as defined in subdivision (c) of California Penal Code Section 236.1 and/or the provision of food, shelter, or payment to a child in exchange for the performance of any sexual act described in subdivision (c) of California Penal Code section 236.1.
- (d) Sexual abuse may also be committed by a person under eighteen (18) years of age when that person is either three years or more older than the victim, when the victim is a mentally impaired child, or when the perpetrator is in a position of power or control over another child.

### **SECTION 1203. Child Neglect**

For the purposes of this chapter, the term “child neglect” includes where a parent or other caretaker:

- (a) Fails to provide the child with adequate food, clothing, shelter, education, medical attention, supervision or other care necessary for the child’s physical, mental, emotional and spiritual health and development, though:
  - (1) The parent or caretaker is financially able to do so; or
  - (2) Public assistance and service programs are reasonably available if the parent or caretaker is indigent;
- (b) Has abandoned the child;
- (c) Has withheld medically indicated treatment, including traditional, cultural, and spiritual healing methods and options where appropriate;
- (d) Is intoxicated or under the influence of a legal or illegal substance which renders the parent or caretaker unable to meet the reasonable demands of the child for care;
- (e) Has been found to be manufacturing/cultivating any illicit drugs in the home or on the property where the home is located or on or property where the child might reasonably be assumed to have access to in the daily life of the child; or
- (f) Has failed to protect the child from the known company of a registered sex offender.

### **SECTION 1204. Psychological Maltreatment**

- (a) For the purposes of this chapter, the term “psychological maltreatment” includes where a parent or caretaker inflicts, causes another to inflict, or fails to make reasonable efforts to prevent the infliction of mental injury upon a child when the parent or caretaker knows or reasonably should know that the child was in danger of psychological maltreatment.
- (b) The term “mental injury” includes, but is not limited to, spurning, terrorizing, isolating, exploiting or corrupting, denying emotional response or neglecting medical care and education. Symptoms of such abuse may be evidenced by an observable and substantial impairment in his or her ability to function within a normal range of performance and behavior, with due regard to his culture.

## **CHAPTER 3. INVESTIGATING & REPORTS**

### **SECTION 1301. Receipt of Reports of Child Maltreatment, Investigation and Written Reports, and Cross-notification.**

When the YSS receives a report of suspected abuse or neglect, the following shall apply:

- (a) Requirement that YSS investigates prior to the filing of petition.
  - (1) Prior to the filing of a CINA petition under this chapter, YSS shall investigate all reports of child maltreatment and, if appropriate, proceed according to the provisions of this Ordinance.

- (b) Cross-notification of child maltreatment reports.
  - (1) When the law enforcement agency or YSS receives an initial report from any person of:
    - (A) The maltreatment of any child of the Tribe; or
    - (B) Actions which would reasonably be expected to result in abuse of a child

The receiving agency shall immediately notify appropriate officials of the other agency of such report and shall also submit, when prepared, a copy of the written report required under Section 1301(c) herein, to such agency.

- (2) Where a report of abuse involves an Indian child or where the alleged abuser is an Indian and where a preliminary inquiry indicates a criminal violation has occurred, the local law enforcement agency, if other than the Federal Bureau of Investigation, shall immediately report such occurrence to the Federal Bureau of Investigation.
- (3) Investigation & Reports of Allegations of Commercial Sexual Exploitation of a Child.
  - (A) “Commercial sexual exploitation” refers to either of the following:
    - (i) The sexual trafficking of a child, as described in subdivision (c) of California Penal Code section 236.1.
    - (ii) The provision of food, shelter, or payment to a child in exchange for the performance of any sexual act described subdivision (c) of California Penal Code section 236.1.
  - (B) Cross Notification within 24 hours.

Where it comes to the attention of the YSS staff that a child is, or is reasonably believed to be, a victim of commercial sexual exploitation, the following shall apply:

- (i) YSS staff shall immediately, and in no case later than 24 hours from receipt of the information, report to the law enforcement agency having jurisdiction over location of the child’s last known residence or last known whereabouts, that a child or youth who is receiving tribal child welfare services has been identified as the victim of commercial sexual exploitation; and
- (ii) YSS staff shall immediately, or in no case later than 24 hours from receipt of the information, report the incident to the appropriate law enforcement authority for entry into the National Crime Information Center database of the Federal

Bureau of Investigation and to the National Center for  
Missing and Exploited Children.

- (c) Written report of child maltreatment required.
  - (1) Within 24 hours after receiving an initial report described in Section 1301(b) herein, the receiving agency shall prepare a written report which shall include, if available:
    - (A) The name, address, age, and sex of the child that is the subject of the report;
    - (B) The grade and the school in which the child is currently enrolled;
    - (C) The name and address of the child's parents or other person responsible for the child's care;
    - (D) The name and address of the alleged offender;
    - (E) The name and address of the person who made the report to the agency consistent with confidentiality requirements as per Section 1301(d) herein;
    - (F) A brief narrative as to the nature and extent of the child's injuries, including any previously known or suspected abuse of the child or the child's siblings and the suspected date of the abuse; and
    - (G) Any other information the agency or the person who made the report to the agency believes to be important to the investigation and disposition of the alleged abuse.
  - (2) Receipt of Report
    - (A) If Yurok Public Safety or YSS receives a report alleging child maltreatment as described in the definitions section above, the YSS shall immediately initiate an investigation of such allegation and shall take immediate, appropriate steps to secure the safety and well-being of the child or children involved.
    - (B) Yurok Public Safety will assist in the investigation upon the request of YSS.
    - (C) If a Yurok Public Safety receives a report of known or suspected child abuse or neglect, it shall first attempt to contact YSS in order to refer the case for investigation. If the Yurok Public Safety is unable to contact YSS, it shall make a complete investigation and may institute appropriate legal proceedings on behalf of the subject child or other children under the same care.
    - (D) The Yurok Public Safety, upon receipt of a report and upon completion of any investigation it may undertake, shall immediately forward a summary of the investigatory data plus all relevant documents to YSS. If YSS is not available for immediate response, the law enforcement agency may take the child into protective custody if there appears to be an immediate threat to the child's well-

being pending an investigation by YSS.

- (E) Upon completion of the investigation of any report of alleged child maltreatment, YSS shall prepare a final written report on such allegation. Copies of which will be available to the Parent or Guardian of the subject child upon request.

(d) Confidentiality of Informant

The identity of any person making a report described in Section 1301(c)(1) shall not be disclosed in the final report of YSS under Section 1301(c)(2)(E) herein, without the consent of the individual, to any person other than a court of competent jurisdiction or an employee of an Indian tribe, a State or the Federal Government who needs to know the information in the performance of such employee's duties with the exception of cross-notifications required under Section 1301 of this Ordinance.

**SECTION 1302. Convening of Multi-disciplinary Team Required for Reports of Known or Suspected Child Sexual Abuse or Severe Physical Abuse, Pursuant to the Federal Crime Control Act of 1990, 18 U.S.C. §3509(g)**

Upon receipt of a report of known or suspected child sexual abuse or physical abuse of a child, or upon investigation of a report of child maltreatment that gives rise to such a suspicion, the Yurok Public Safety or YSS, whichever agency first receives the report of child maltreatment, shall notify the Office of the Tribal Attorney which shall convene a multi-disciplinary team, to provide services including:

- (a) Medical diagnoses and evaluation services, including provision or interpretation of x-rays, laboratory tests, and related services, as needed, and documentation of findings;
- (b) Telephone consultation services in emergencies and in other situations;
- (c) Medical evaluations related to maltreatment;
- (d) Psychological and psychiatric diagnoses and evaluation services for the child, Parent or Guardian, or other caregivers, or any other individual involved in a child victim or child witness case;
- (e) Expert medical, psychological, and related professional testimony;
- (f) Case service coordination and assistance, including the location of services available from public and private agencies in the community; and
- (g) Training services for judges, litigators, court officers and others that are involved in child victim and child witness cases, in handling child victims and child witnesses.

**SECTION 1303. Scope of Investigation and Written Report**

YSS shall initiate an investigation when an allegation is made that a child is the subject of abuse or neglect, or that actions may be taken which would reasonably be expected to result in abuse or neglect of a child. In the course and scope of the investigation, the responsible agency shall:

- (a) Contact and interview all relevant parties, including the parents and children, as well as, if appropriate, caretakers, relatives, extended family members, neighbors, teachers, and treatment personnel;

- (b) Visit the home and/or place where the child is residing;
- (c) Investigate and report on the child's current circumstances, including home environment, parental and family history, including criminal histories, parent's current circumstances, including financial information if relevant, the nature of the reported charges, and the information supporting or contravening those charges;
- (d) Determine if the child can remain safely in the home with services provided, and assist in providing those services;
- (e) Seek out relatives, extended family members, or others with whom the children are familiar, and with whom the children can be placed, if necessary, pending further investigation;
- (f) Make tentative conclusions as to what is in the best interests of the child, and how best to protect the child's health and safety until further investigation can be concluded; and
- (g) Information gained in the investigation shall be included in a written report and included with the Petition or presented and filed at the preliminary hearing.

**SECTION 1304. Mandate to Develop, Adopt, and Implement Investigation Protocols**

The Office of the Tribal Attorney, Yurok Public Safety, and YSS shall adopt and implement standard child abuse and neglect investigation and interview protocols using a model tribal or state protocol that shall implement provisions required by this Ordinance.

**SECTION 1305. Conclusions to be Included in Social Service Agency Reports Post Investigation**

One of the following conclusions shall be included in a written social services agency report of an investigation of child maltreatment:

- (a) *Unfounded report* means a report which is determined by the investigator who conducted the investigation to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child maltreatment, as defined above;
- (b) *Substantiated report* means a report which is determined by the investigator who conducted the investigation, based upon some credible evidence, to constitute child maltreatment, as defined above;
- (c) *Inconclusive report* means a report which is determined by the investigator, who conducted the investigation not to be unfounded, but in which the findings are inconclusive and there is insufficient evidence to determine whether child maltreatment, as defined above, has occurred.

In all actions in which a substantiated report of child maltreatment is confirmed, the Court shall order YSS to implement a Family Conferencing Plan as part of the services offered to the family. In any cases of an inconclusive report, YSS shall offer to the family appropriate services including a Family Conferencing Plan.

**SECTION 1306. Outcome of Report of Child Maltreatment and Investigation.**

Following the report of child maltreatment and investigation, the social services agency shall pursue

one of the following courses of action:

- (a) Close the case if the agency determines that the child is not a CINA or at risk of becoming a CINA;
- (b) Keep the case open and offer family support services in order to alleviate the need for a CINA petition;
- (c) Keep the case open and offer to schedule a Family Group Conference to alleviate the need for a CINA petition;
- (d) File a CINA petition; or
- (e) Institute a case plan pursuant Chapter 1.

## **CHAPTER 4. PROTECTIVE ORDERS**

### **SECTION 1401. Removal of a Dangerous Individual from the Home Using a Protective Order**

- (a) The Court may issue a written or oral emergency order for protection *ex parte* when the YSS, Yurok Public Safety officer, or other authorized tribal agent, states to the Court, in person or by telephone, facts giving rise to a reasonable belief that the petitioner is in immediate danger of family violence.
- (b) The Court may grant an emergency order for protection to remove and exclude the respondent from the residence of the petitioner, regardless of ownership of the residence.

### **SECTION 1402. Temporary Emergency Child Protection Restraining Order**

Where individuals seek issuance of a Child Protection Restraining Order under this section, the following shall apply:

- (a) Definitions
  - (1) *Family violence* means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense:
    - (A) Attempting to cause or causing physical harm to another family or household member;
    - (B) Placing a family or household member in fear of physical harm; or
    - (C) Causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress.
  - (2) *Family or household members* means:
    - (A) Adults or minors who are current or former spouses;
    - (B) Adults or minors who live together or who have lived together;
    - (C) Adults or minors who are related by blood or adoption;
    - (D) Adults or minors who are related or formerly related by marriage;

- (E) Persons who have a child in common; or
  - (F) Minor child of a person in a relationship that is described in sections (A) through (D).
- (b) Eligible Petitioners for Order
- (1) The following persons may file a petition for a temporary emergency child protection restraining order against a family or household member who commits an act of family violence:
    - (A) A child who allegedly is or has been a victim of family violence;
    - (B) The Parent, Guardian, Caretaker, or other representative of the alleged victim of family violence; or
    - (C) An agency, or its representative, designated by Yurok Tribal law to file such a petition.
- (c) Uniform Form Required for Petitions and Orders; Required Statements in Petitions and Orders; Duty of Clerk to Provide Petitions and Clerical Assistance
- (1) The Court shall:
    - (A) Develop and adopt uniform forms for petitions and orders for temporary emergency child protection restraining orders; and
    - (B) Provide the forms to the clerk of the court authorized to issue such orders.
  - (2) The petition for a temporary emergency child protection restraining order must contain the following information:
    - (A) A statement listing each civil or criminal action involving both respondent and petitioner;
    - (B) The statement, “Violation of this order is punishable by confinement in jail for as long as one (1) year and/or a fine not to exceed \$5,000”; and
    - (C) Any other information the tribal court deems necessary.
  - (3) The clerk of the Court shall provide to a person requesting an order for protection:
    - (A) The forms adopted pursuant to Section 1402(c)(1) herein;
    - (B) All other forms required to petition for a temporary emergency child protection restraining order, including but not limited to, forms for service and forms required by the Uniform Child Custody Jurisdiction Act; and
    - (C) Clerical assistance in filling out the forms and filing the petition.
  - (4) Temporary Emergency Child Protection Restraining Order; Available Relief; Availability of Judge or Court Officer
    - (A) The Court may issue a written or oral emergency order for protection ex parte when a Yurok Public Safety officer, or other authorized

tribal agent, states to the court, in person or by telephone, facts giving rise to a reasonable belief that the petitioner is in immediate danger of family violence.

- (B) A Yurok Public Safety officer who receives an oral order of protection from a court shall:
  - (iii) Write and sign the order on the form required pursuant to Section 1402(c) herein;
  - (iv) Serve a copy on the respondent;
  - (v) Immediately provide the petitioner with a copy of the order; and
  - (vi) Provide the order to the court by the end of the next judicial day.
- (C) The court may grant the following relief in an emergency order for protection:
  - (i) Enjoin the respondent from threatening to commit or committing acts of domestic or family violence against the petitioner and any designated family or household member; or
  - (ii) Prohibit the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly;
  - (iii) Remove and exclude the respondent from the residence of the petitioner, regardless of ownership of the residence;
  - (iv) Order the respondent to stay away from the residence, school, place of employment of the petitioner, or any specified place frequented by the petitioner and any designated family or household member; and
  - (v) Order such other relief as the court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member.
- (D) A judge or other court officer with authority to issue a temporary child protection restraining order must be available 24 hours a day to hear such petitions.

(5) Effect of Action by Petitioner or Respondent on Order

If a respondent is excluded from the residence of a petitioner or ordered to stay away from the petitioner, an invitation by the petitioner to do so does not waive or nullify an order for protection.

(6) Court Costs and Fees

Fees for filing a petition for a temporary child protection restraining order and service of process shall not be charged for any proceeding seeking only the relief provided in this chapter.

(7) Penalty for Violation of a Temporary Child Protection Restraining Order

Violation of a temporary child protection restraining order is punishable by confinement in jail not to exceed one (1) year and/or a fine not to exceed \$5,000.

(8) Temporary Child Protection Restraining Order Hearing

- (A) A hearing to determine whether the petitioner-child is in immediate danger of family violence shall be held within three Court Days of the filing of a temporary emergency child protection restraining order with the tribal court. The three Court Day period excludes weekends and court holidays.
- (B) The Court shall direct Yurok Public Safety to notify both the petitioner and respondent as to the date, time, and location of the hearing at least 24 hours before the hearing is scheduled.
- (C) Both petitioner and respondent must be present at the hearing.
- (D) The hearing shall be informal in nature. Concerned parties may present evidence or testimony relating to the situation. Hearsay evidence will not be excluded so long as it is otherwise admissible. The general public shall be excluded from the proceedings. Only the parties, legal counsel, witnesses, the child's extended family, and other persons determined to be appropriate by the court shall be admitted.
- (E) During the hearing, the court shall advise the parties of the reason for the hearing and of their basic rights as provided by this Statute.
- (F) After hearing all the evidence presented, the tribal court shall make a finding as to whether the petitioner-child is in immediate danger of family violence.
  - (i) If the Court finds that the petitioner-child is not in immediate danger of family violence, the temporary emergency child protection restraining order shall be dismissed. The dismissal of the notice of removal shall not serve as a bar to further investigation of this matter by the tribe. The court shall order a family conference, as defined by this Statute, to help resolve the issues leading to the issuance of the temporary child protection restraining order.
  - (ii) If the Court finds that the petitioner-child is in immediate danger of family violence, the temporary emergency child protection restraining order may be extended for up to three (3) years from the date of the hearing and shall be renewable

for up to 20 years or otherwise modified to protect the child. The court shall order a family conference, as defined by this Statute, to help resolve the issues leading to the issuance of the temporary child protection restraining order.

## **CHAPTER 5. REMOVAL OF CHILD**

### **SECTION 1501. Entity Responsible for Taking Emergency Custody of Children**

YSS and Yurok Public Safety shall be authorized to take a child that is a CINA or is at risk of becoming a CINA, into emergency custody under this Chapter subject to the filing of a petition for an Emergency Custody/Detention Order within 48 hours, not to include non-judicial days, of the child's physical removal from the home if the child is not returned to the Parent/Guardian/Caretaker within that timeframe.

### **SECTION 1502. Taking a Child into Emergency Custody/Detention**

The tribal representative shall take a child into emergency custody/detention if:

- (a) An Emergency Custody/Detention Order has been issued by this Court for the child following a hearing pursuant to this Ordinance, An order authorizing removal of the child may be issued after a hearing at which this Court determines that continuation in the child's home would be contrary to the child's welfare:
- (b) He or she has reasonable grounds to believe that the child is a CINA and that one or more of the conditions that would make the child a CINA exist;

### **SECTION 1503. Notice of Emergency Custody/Detention to the Parent/Guardian/Caretaker**

- (a) The removing agency shall make all reasonable efforts to notify the Parent/Guardian/Caretaker within twelve (12) hours of the child's removal.
- (b) Reasonable efforts shall include personal, telephone and written contacts at the residence, place of employment, or other location where the Parent/Guardian/Caretaker is known to frequent with regularity.
- (c) If the Parent/Guardian/Caretaker cannot be found, notice shall be given to extended family members.

### **SECTION 1504. Notice of Removal to the Court**

After a child is taken into emergency custody, the removing agency shall immediately notify this Court.

## **CHAPTER 6. ACTIVE EFFORTS**

### **SECTION 1601. Active Efforts Required**

- (a) YSS shall make active efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured; to effect the safe reunification of the child and family (if temporary out-of-

home placement is necessary to ensure the immediate safety of the child); and to make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible.

- (a) In determining active efforts to be made with respect to a child and in making such efforts, the child's health and safety shall be the paramount concern.
- (b) When a child is removed from his/her home, a judicial determination as to whether active efforts were made, or were not required to prevent the removal, must be made no later than 60 days from the date the child is removed from the home. If the determination concerning active efforts to prevent the removal is not made within 60 days of removal, the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.
- (c) Active efforts shall be made to preserve and reunify families—
  - (1) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and
  - (2) to make it possible for a child to safely return to the child's home;
  - (3) if continuation of active efforts to reunify is determined to be inconsistent with the permanency plan for the child, active efforts shall be made to place the child in a timely manner in accordance with the permanency plan (including, if appropriate, through an inter-jurisdictional placement) and to complete whatever steps are necessary to finalize the permanent placement of the child.
- (d) Active Efforts to Finalize a Permanency Plan
  - (1) YSS must obtain a judicial determination that it has made active efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child is considered to have entered foster care, and at least once every 12 months thereafter while the child is in foster care.
  - (2) If such a judicial determination regarding active efforts to finalize a permanency plan is not made within 12 months of the date the child is considered to have entered foster care, and at least once every 12 months thereafter, the child becomes ineligible under title IV-E at the end of the 12<sup>th</sup> month in which the judicial determination was required to have been made, and remains ineligible until such a determination is made.
- (e) When Active Efforts to Prevent Removal or Reunify are Not Required

There are certain circumstances in which active efforts are not required to prevent a child's removal from the home or to reunify the child and family. Active efforts to prevent a child's removal from home or to reunify the child and family are not required if YSS obtains a judicial determination that such efforts are not required because:

  - (1) The Court has determined that Aggravated Circumstances justify the non-

provision of non-provision of active efforts as described in this section. Aggravated Circumstances as defined in this Ordinance shall consist of those circumstances identified in California Welfare and Institutions Code section 361.5(b).

(f) Permanency Hearings When Active Efforts Are Not Required

When a judicial determination is made that active efforts are not required:

- (1) A permanency hearing, which considers interstate and inter-jurisdiction permanent placement options for the child, shall be held for the child within 30 days after the determination; and
- (2) Active efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; and
- (3) Active efforts to place a child for adoption or with a legal guardian, including identifying appropriate interstate and inter-jurisdiction placements may be made concurrently with reasonable and active efforts to reunify.

(g) Documentation of the Judicial Determinations

The judicial determinations regarding contrary to the welfare, active efforts to prevent removal, and active efforts to finalize the permanency plan in effect including judicial determinations that active efforts are not required, must be explicitly documented and must be made on a case-by-case basis and so stated in the court order.

- (1) If such judicial determinations are not included as required in the court orders, a transcript of the court proceedings is the only other documentation that will be accepted to verify that these required determinations have been made.
- (2) Court orders that reference Tribal law (or the laws of another jurisdiction) to substantiate judicial determinations are not acceptable, even if the law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal can only be ordered after active efforts have been made.

(h) The duty to make active efforts includes, but is not limited to the, duty to:

- (1) Identify family support services that will assist the Parent/Guardian/Caretaker in remedying the conduct or conditions in the home that created the need for removal or made the child a CINA;
- (2) Actively offer the Parent/Guardian/Caretaker the services identified under Section 1601(a) herein;
- (3) Initiate a Family Conferencing Plan;
- (4) Actively refer the Parent/Guardian/Caretaker to community-based family support services whenever community-based services are available and desired by the Parent/Guardian/Caretaker; and
- (5) Document all actions taken by YSS pursuant to Section 1601 (a)-(d) herein.

Such documentation will be included in any reports made to the Court.

YSS shall make, not less often than every six months, a determination or redetermination as to whether the child remains at imminent risk of removal from the home.

- (i) Case reports and plans
  - (1) YSS or other agency designated by the court shall develop a case plan in all cases. A case plan means a written document which is a discrete part of the case record, developed jointly with the Parent(s) or Guardian(s) of the child.
  - (2) For the purpose of determining proper disposition of a child, written reports and other material relating to the child's mental, physical, and social history may be received and considered by the court along with other evidence.
  - (3) The court, either on its own motion or if so requested by the child, the child's Parent or Guardian, or other interested party, shall require that the person who wrote the report or prepared the material appear as a witness and be subject to both direct and cross-examination.
  - (4) The case plan shall be made available to the court and the parties as deemed appropriate by the court at least five (5) court days prior to the hearing at which it will be considered.

(j) Trial Home Visits

A trial home visit may not exceed six months in duration, unless the court orders a longer trial home visit. If a trial home visit extends beyond six months and has not been authorized by the court, or exceeds the time period the court has deemed appropriate, and the child is subsequently returned to foster care, that placement must then be considered a new placement and title IV-E eligibility must be newly established. Under these circumstances, the judicial determinations regarding contrary to the welfare and active efforts to prevent removal are required.

**SECTION 1602. Alternative Permanency Plans**

- (a) YSS may develop and implement another planned permanent living arrangement for the child while simultaneously making active efforts to unite or reunite the child with his Parent/Guardian/Caretaker. Such an alternative plan may include a family conferencing plan.
- (b) When the child is 16 years of age or older and in a planned permanent living arrangement other than return home, adoption, legal guardianship, or placement with a fit and willing relative the court shall do all of the following:
  - (1) Ask the child about his or her desired permanency outcome.
  - (2) Make a judicial determination explaining why, as of the hearing date, another planned permanent living arrangement is the best permanency plan for the child.
  - (3) State for the record the compelling reason or reasons why it continues not to be in the best interest of the child to return home, be placed for adoption, be

placed with a legal guardian, or be placed with a fit and willing relative.

## CHAPTER 7. HEARINGS

### SECTION 1701. Emergency Custody/Detention Hearing

(a) Filing of an Emergency Petition Seeking Detention

- (1) Within 48 hours, not to include non-judicial days, the removal of a child YSS shall file a petition for emergency custody with the Court.
- (2) If no petition is filed, the child shall be released within 48 hours, not to include non-judicial days from when he was taken into emergency custody.

(b) Purpose

The purpose of the emergency custody hearing is to determine whether the removal of the child from the home is necessary to protect the safety and welfare of the child.

(c) Delivering the Child into Custody

The tribal representative who takes a child into custody shall:

- (1) Release the child to his Parent/Guardian/Caretaker or other responsible adult immediately when the condition that created the need for emergency custody no longer exists, and issuing verbal instructions or warnings is sufficient to protect the child; or
- (2) Deliver the child immediately to a family advocate, YSS Staff, or to a shelter care facility designated by the court, or to a medical facility if the child is believed to be in need of medical attention. If appropriate, a Tribal representative taking a child into custody may deliver the child into the custody of a previously designated caretaker or extended family member at their discretion.
- (3) In all cases, a child taken into custody under this Section shall be released to his Parent/Guardian/Caretaker 48 hours, not to include non-judicial days, of the time he was taken into emergency custody unless the court issues an order following a hearing pursuant to this statute granting an extension of custody.

(d) Emergency Custody/Detention Petition

- (1) In order to request an extension of emergency custody, YSS must file a petition documenting a prima facie showing that the child is a CINA and that one of more of the conditions that would make the child a CINA exist.

Any petition filed under this section must include allegations that:

- (A) The child is suffering from an illness or injury, and no Parent/Guardian/Caretaker is providing adequate care for him;
- (B) The child is in imminent danger from his surroundings, removal is necessary for the safety or well-being of the child, or failure to remove the child may result in a substantial risk of harm to the child;

- (C) The child will be subject to injury or abuse by others or by himself if not placed in custody by the court;
  - (D) The child has been abandoned by his Parent/Guardian/Caretaker;
  - (E) No Parent/Guardian/Caretaker is able or willing to provide adequate supervision and care for the child; or
  - (F) The child will run away or be taken beyond the jurisdiction of the court, and will be unavailable for further proceedings.
- (2) If a child was taken into emergency custody without a hearing, the court shall conduct a hearing within 48 hours, not to include non-judicial from when the child was taken into emergency custody to determine whether the emergency custody was proper.
  - (3) In assessing whether or not the child should be returned to the home, the tribal court may consider previous findings of child maltreatment by the Parent/Guardian/Caretaker and the availability of other family members to care for the child as well as the facts leading to the present removal of the child.
- (e) Hearings and Notice
- The Parent/Guardian/Caretaker of a child taken into emergency custody shall be given reasonable notice of the time and place of the emergency custody hearing. That notice will be given at least 5 hours prior to the hearing which is scheduled within 48 hours, not to include non-judicial days of detention as noted above, unless the Parent/Guardian/Caretaker cannot be located and/or unless conditions of notice, e.g., flooding, road closures, or other acts of inclement weather make such notice attempts dangerously unadvisable. In such case(s) that notice cannot be effected YSS must file a Declaration of Due Diligence fully setting forth the circumstances preventing such notice.
- (f) Persons Present; Hearsay Evidence
- (1) Unless requested by a Parent/Guardian/Caretaker and consented to or requested by the child concerning whom the petition has been filed, the public shall not be admitted to an emergency custody hearing. The judge may nevertheless admit such persons as he/she deems to have a direct and legitimate interest in the particular case or the work of the court.
  - (2) A report prepared by YSS, and hearsay evidence contained in it, where the hearsay declarant is a peace officer, a health practitioner, a social worker, or a teacher, is admissible and constitutes competent evidence upon which a finding of jurisdiction [a finding that a child is, or is likely to be, a CINA] may be based.
  - (3) The preparer of the report shall be made available for cross-examination upon a timely request by any party. The court may deem the preparer available for cross-examination if it determines that the preparer is on telephone standby and can be present in court within a reasonable time of the request or available by telephone.

- (4) A CASA shall be appointed to any unrepresented child in all Court proceedings pursuant to Section 1807 of this Ordinance. The CASA volunteer shall be presented all relevant documents in that child's cases including, but not limited to, Social Services Reports, Court Findings and Orders, Discovery materials and all petitions filed.
- (g) **Timing of Emergency Custody/Detention Hearing**  
 The court shall immediately, and in no event more than 48 hours, not to include non-judicial days after being notified of the removal of a child from his or her home, hold an emergency custody hearing. If present at the hearing, a Parent/Guardian/Caretaker of the child may request a continuance of the hearing for the purpose of preparing a response to the allegation that the child is a CINA. The court may grant the request on a showing of good cause for why the Parent/Guardian/Caretaker is not prepared to respond to the allegation. During a continuance, the child remains in the emergency custody of YSS.
- (h) **Basis for Removal**
- (1) A child may be placed in emergency custody/detention for up to fifteen (15) days if the tribal court at a hearing finds a prima facie showing that the child is a CINA and one or more of the following conditions exist:
- (A) The child is suffering from an illness or injury, and no Parent/Guardian/Caretaker is providing adequate care for him; or
  - (B) The child has been subjected to aggravated circumstances, child is in imminent danger from his/her surroundings, removal is necessary for the safety or well-being of the child, or failure to remove the child may result in a substantial risk of harm to the child, or;
  - (C) The child will be subject to injury or abuse by others or by himself if not placed in custody by the court; or
  - (D) The child is an abandoned infant, or has been abandoned by his/her Parent/Guardian/Caretaker, or;
  - (E) No Parent/Guardian/Caretaker is able or willing to provide adequate supervision and care for the child, or;
  - (F) The child will run away or be taken beyond the jurisdiction of the court, and will be unavailable for further proceedings.
  - (G) A Safely Surrendered Infant.
- (2) If a child was taken into emergency custody without a hearing, the Court shall conduct a hearing within three Court days from when the child was taken into emergency custody to determine whether the emergency custody was proper.
- (3) In assessing whether or not the child should be returned to the home, the Court may consider previous findings of child maltreatment by the Parent/Guardian/Caretaker and the availability of other family members to care for the child as well as the facts leading to the present removal of the child.

- (i) YSS to Make Prima Facie Case
  - (1) The tribal social worker shall report to the Court on the reasons why the child has been removed from the physical custody of the Parent/Guardian/Caretaker and the need, if any, for continued removal. The Court shall order the release of the child from custody unless a prima facie showing has been made that the child is a CINA as defined in this Ordinance, the Court finds that continuance in the home of a Parent/Guardian/Caretaker is contrary to the child's welfare.
- (j) Notification of Rights
  - (1) Right to an Attorney or Spokesperson: The Court shall advise the parties of the right to retain legal counsel or a Spokesperson at their own expense, or to a Court Appointed Advocate, if applicable.
  - (2) Right to Present Evidence: A Parent/Guardian/Caretaker, or counsel for such person, child over the age of (12) twelve, or counsel for a child of any age, shall be given the opportunity to present evidence to the Court at the emergency custody/detention hearing. Evidence may include that the child can be returned to the care of the Parent/Guardian/Caretaker pending the jurisdiction hearing without further jeopardy to the child's health or safety, without endangering the health or safety of others, or without fear of removal of the child from the area.
- (k) Findings and Active Efforts
  - (1) At the emergency custody /detention hearing, the Court must make the following findings:
    - (A) Whether return of custody to the Parent/Guardian/Caretaker is contrary to the child's welfare because the child has determined to be a CINA as defined in this Ordinance;
    - (B) Responsibility for placement and care of the child is vested with YSS; and
    - (C) Whether active efforts have been made to prevent the removal of the child or that active efforts to prevent removal and reunify were not required due to aggravated circumstances; and return the child after the removal, but that said efforts have not been successful.
  - (2) YSS may develop and implement an alternative permanency plan for the child while simultaneously making active efforts to unite or re-unite the child with his Parent/Guardian/Caretaker.
- (l) Possible Emergency Custody/Detention Hearing Outcomes
  - (1) Disposition of Prima Facie Showing
 

If the court determines there is a prima facie showing that the child is a CINA, the court may:

    - (A) Detain and set a timely re-hearing of the Petition and grant custody of the child to the YSS, and place the child in the physical custody of

a non-parent(s), guardian, or caretaker pending the jurisdiction hearing; and set a jurisdiction hearing; or

- (B) Detain and set a timely re-hearing of the Petition and grant custody of the child to the YSS, and place the child in the physical custody of another appropriate person, or in shelter or foster care; and set a jurisdiction hearing; or
- (C) Affirm any other reasonable plan recommended by YSS and/or stipulated to by the parties, including but not limited to the postponement of proceedings; and
- (D) Order such restrictions on contact or visitation that the court deems appropriate; and
- (E) Set additional preliminary inquiry hearings or other hearings as necessary.

(2) Dismissal of the Petition

If the court determines there is no prima facie showing that the child is a CINA, the Petition for Emergency Custody shall be dismissed without prejudice, and the child released from emergency custody.

(m) Evidence in Emergency Custody/Detention Hearings

(1) Use of Reports

For the purpose of establishing that a child is a CINA, determining proper disposition of a child, and/or periodically reviewing the child's and family's progress, written reports and other materials relating to the child's mental, physical, educational, and social history and condition, may be received in evidence and may be considered by the court along with other evidence. The court may also require that the person who prepared the report or the person or persons whose opinions or statements are contained within such reports appear as a witness if such person or persons are reasonably available.

(2) Right to Present Evidence

A Parent/Guardian/Caretaker, or lawyer for a Parent/Guardian/Caretaker, child over the age of twelve (12), or lawyer, spokesperson admitted to the Tribal Bar, or CASA volunteer for a child of any age, shall be given the opportunity to present evidence to the court at the Custody Hearing. The Court may hear any evidence which is relevant to the case and is reasonably reliable, which evidence may include evidence supporting a determination that the child be returned pending the Jurisdiction Hearing without further jeopardy to the child's health or safety and without fear of removal of the child from the area.

(n) Court Ordered Evaluations

- (1) The court may order that a child, who is the subject of a filed petition for emergency custody/detention, be examined by a physician, surgeon, psychiatrist or psychologist, and may place the child in a hospital or other facility for such examination.

- (2) The court may also order an examination of a Parent/Guardian/Caretaker whose ability to care for the child is at issue if the court finds evidence presented at the hearing that the physical, mental, or emotional condition of the Parent/Guardian/Caretaker may be a factor in causing the maltreatment of the child. Such examination may be ordered only for purposes of custody disposition and with consent of the Parent/Guardian/Caretaker.
- (o) Active efforts must be made to place siblings in the same home.  
Requirements for the implementation of this section shall be specified by the YSS in the Indian child Welfare Policies and Procedures Manual.
- (p) Secure Detention Prohibited  
No child who is in emergency custody or who is determined to be a CINA shall be detained in a secure juvenile detention facility, jail, or prison for any amount of time under this Ordinance.
- (q) Visitation
  - (1) Responsibilities and Rights of Parents; Right to Visitation
    - (A) Whenever a child is temporarily or permanently removed from the custody of one or both parents, each parent shall have the right to reasonable and frequent visitation, provided that the parent's rights have not been terminated but such visitation will be subject to limitations imposed by the court for the child's protection.
  - (2) Responsibilities and Rights of Extended Family Members; Right to Visitation.
    - (A) Any member of a child's extended family has the right to reasonable visitation with that child if necessary for the best interests of the child.
  - (3) Effect on Visitation Rights of a Finding of Aggravated Circumstances.
    - (A) After a finding of the existence of an aggravated circumstance with regard to a Parent/Guardian/Caretaker, or extended family member, the court may deny that Parent/Guardian/Caretaker, or extended family member visitation rights with respect to any child who has been adjudicated a CINA.

**SECTION 1702. Jurisdiction Hearings**

- (a) Timing  
The Jurisdiction Hearing shall be held no later than thirty (30) days following conclusion of the Emergency Custody/Detention Hearing but may be held in conjunction with the Emergency Custody Hearing.
- (b) Purpose  
The purpose of the Jurisdiction Hearing is for the Court to reassess whether continuing court involvement is necessary to protect the well-being of the child, and

to determine whether continuation in the home is contrary to the welfare of the child and whether active efforts have been made to prevent the child's removal from the home and to safely reunify the family.

(c) Findings

- (1) The Court shall find the allegations of the petition to be true or dismiss the petition, unless the hearing shall be continued to a date certain to allow for the presentation of further evidence.
- (2) Jurisdictional matters of the age and residence of the child shall be deemed admitted by or on behalf of the child, unless specifically denied prior to the Jurisdiction Hearing.
- (3) When it appears that the evidence presented at the hearing discloses facts not alleged in the petition, the Court may proceed immediately to consider such additional or different matters raised by the evidence.
- (4) In such event, the Court, on the motion of an interested party or on its own motion, shall order the petition to be amended to conform to the evidence. If the amendment results in a substantial departure from the original allegations in the petition, the court shall continue the hearing on the motion of any interested party, or on its own motion, if it finds such continuance to be in the best interests of the child or any other party to the proceedings materially prejudiced by the change in allegations.
- (5) The burden of proof lies with the petitioner (the person filing the petition). The petitioner must prove that the allegations raised in the petition are more likely true than not, that is, by a preponderance of the evidence, and that the best interests of the child and the child's Tribe will be served by continued court intervention.
- (6) After making the necessary findings but before judicial ruling/determination on the Petition, the Tribal Court may continue the hearing from time to time, allowing the child to remain in his or her own home or in the temporary custody of another person or agency, subject to such conditions of conduct and of visitation or supervision by YSS as the Tribal Court may order, if:
  - (A) Consent is given by the child and his or her Parent/Guardian/Caretaker or other legal custodian after being fully informed by the court of their rights in the proceedings, including their right to have a determination made either dismissing or sustaining the petition; and
  - (B) Such continuation shall extend no longer than three (3) months without review by the court. Upon review the court may continue the case for an additional period not to exceed six (6) months, after which the petition shall either be dismissed or sustained.

**SECTION 1703. Disposition Hearings**

(a) Timing

The Tribal Court shall hear evidence regarding the proper disposition best serving

the interests of the child and his or her tribe. The Disposition Hearing may be held in conjunction with the Jurisdiction Hearing if that is in the best interest of the child and the parties.

(b) Evidence

The evidence shall include, but not necessarily be limited to, the social study and other reports, and such other oral and documentary facts as the parties may present.

(c) Findings & Orders

(1) The Tribal Court shall determine:

- (A) The appropriate disposition of the case and long-term plan for the child;
- (B) Whether the proposed case plan reasonably addresses the problems and needs of the child and the parents, including whether or not the placement recommendation of the case plan is appropriate.

(2) The Court may find that out-of-home placement is not needed to protect the child, but may continue court intervention and supervision due to unresolved problems in the home.

(3) The Court may find that the child shall remain out of the home. The grounds for continued removal are those found in Section 1701(d) herein. Any Finding that the child shall remain out of the home shall be made by Clear and Convincing Evidence. Should the Court find that the child shall remain out of the home, the Court must also find that:

- (A) Continuance in the home is contrary to the child's welfare;
- (B) Temporary placement and care of the child is vested with YSS department; and
- (C) Active efforts have been made to prevent removal of the child, or to return the child after the emergency removal, but said efforts have not been successful.
- (D) The court shall project a likely date by which the child may be returned to and safely maintained in the home or placed for adoption, legal guardianship, placed with a fit and willing relative, or in another planned permanent living arrangement and if the child is over 16 years of age, in another planned living arrangement.

(4) The Court may find that out-of-home placement is necessary, but with the performance of specified actions by the Parent/Guardian/Caretaker, the child may be returned absent good cause to the contrary. The order of the Court shall specify actions, and the time frames for such actions, that the Parent/ Guardian/Caretaker must accomplish before the child is returned. The order shall also specify the responsibilities of any support agency or personnel to be involved. The Tribal Court may order a trial home visit. The Court order must explicitly delineate the length and other parameters of the home visit.

- (5) The Court may find that out-of-home placement continues to be necessary and further that the child shall not be returned to the home, absent further order of the Court. The Court shall specify what steps the Parent/Guardian/Caretaker shall take to demonstrate their abilities to care for their child, and specify what factors the court will consider at a subsequent hearing to determine whether or not the child should be returned home.
- (6) When the child is 16 years of age or older and in a planned permanent living arrangement other than return home, adoption, legal guardianship, or placement with a fit and willing relative, the Court shall do all of the following:
  - (i) Ask the child about his or her desired permanency outcome.
  - (ii) Make a judicial determination explaining why, as of the hearing date, another planned permanent living arrangement is the best permanency plan for the child.
  - (iii) State for the record the compelling reason or reasons why it continues not to be in the best interest of the child to return home, be placed for adoption, be placed with a legal guardian, or be placed with a fit and willing relative.
- (7) In addition to the placement disposition alternatives, the Court may order the child, Parent/Guardian/Caretaker to attend any of the following if the Court determines they are related to the circumstances which cause the child to come to the attention of the court, and if they are likely to promote the best interests of the child and his or her Tribe and the reunification of the child with his or her family.
  - (A) Parenting education classes;
  - (B) Alcohol or substance abuse treatment;
  - (C) Wellness Court services;
  - (D) Anger Abatement classes;
  - (E) Counseling for victims or perpetrators of domestic violence; or
  - (F) Any other services that the Court determines may be useful in aiding family reunification.
- (8) The Court may continue the Disposition Hearing on its own motion or on the motion of any interested party, for a reasonable period to receive reports or for good cause. If the hearing is continued, the court shall make an appropriate order for care of the child during the continuance.
- (9) In scheduling investigations and hearings, the court shall give priority to proceedings concerning children who have been removed from their homes

before an order of disposition has been made.

**SECTION 1704. Status Review Hearings**

(a) Timing

The status of all children shall be reviewed by the Tribal Court at least every ninety (90) days at a hearing to determine whether court supervision shall continue. In no event shall the first status review hearing for a child placed in foster care or another out of home arrangement be made more than six (6) months after the date the child is considered to have entered foster care. The date that the child enters foster care shall be the earlier of the first judicial finding of child abuse or neglect (the jurisdiction finding) or sixty (60) days after the child is physically removed from the home of the Parent(s), Guardian(s), or Caretaker(s).

(b) Purpose and Findings

(1) A child shall be returned home at the Status Review Hearing unless the Tribal Court finds that a reason for removal as set forth above in this Children's Ordinance still exists. The Court may, however, due to unresolved problems in the home, continue court intervention, services and supervision as appropriate.

(A) If appropriate, the Court may refer the matter to the Tribe's Peacemaker Mediation Forum or for Family Unity Conferencing.

(B) At the status review hearing, the court will determine:

- (i) The safety of the child, the continuing need for and appropriateness of the child's placement;
- (ii) the extent of compliance by all parties with the case plan;
- (iii) the extent of progress the parent has made toward alleviating or mitigating the causes necessitating the placement and whether sufficient progress is being made to consider return home in the near future;
- (iv) consider whether the services provided to the family have been appropriate, accessible and provided in a timely manner;
- (v) whether YSS can reasonably provide additional services which will facilitate the return of the child to parental care;
- (vi) assess YSS's concurrent case planning and efforts to effect an alternative permanent plan in the event there is insufficient progress to restore custody;
- (vii) whether active efforts have been made by the YSS to alleviate the need for removal and/or whatever steps are necessary to finalize a permanent placement for the child;

- (viii) project a likely date when the child will be returned and safely maintained at home or when an alternative permanent plan will be put into effect;
  - (ix) if the child is placed out of state, whether the out-of-state placement continues to be appropriate and in the best interest of the child; and
  - (x) in the case of a child who has attained age sixteen (16), the services needed to assist the child to make the transition from foster care to independent living.
- (C) If the Court finds that the child should not be returned home, the Court shall make the following findings:
- (i) The child's out of home placement continues to be necessary and appropriate;
  - (ii) Clear and convincing evidence shows that YSS has complied with the case plan by making active efforts to make it possible for the child to safely return home and to complete whatever steps are necessary to finalize a permanent placement for the child;
  - (iii) The extent of progress which has been made by the parent toward alleviating or mitigating the causes necessitating placement has been (1) minimal; (2) moderate; or (3) substantial; and family reunification services should be continued or terminated. This finding may result in differing levels of progress for each parent.
  - (iv) The likely date by which the child may be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian, placed permanently with a relative or placed in another planned, permanent living arrangement.

**SECTION 1705. Permanency Hearings**

Yurok holds permanency hearings for all children under the responsibility for placement and care of YSS including children under voluntary placement agreements.

(a) Timing

No later than twelve (12) months from the “date the child entered foster care” and at least once every twelve months thereafter while the child remains in foster care, the Court must hold a Permanency Hearing. This hearing may be held in conjunction with a Status Review Hearing. In any case in which no reunification services are offered, the permanency hearing must be held within thirty (30) days of the disposition hearing. In the case of

an abandoned infant, the permanency hearing must be held within sixty (60) days of the disposition hearing.

(b) Purpose

The purpose of the Permanency Hearing is to determine a permanency plan for the child, including whether, and if applicable, when, the child will be:

- (1) returned home;
- (2) placed for a Traditional adoption
- (3) placed Adoption with termination of parental rights;
- (4) referred for Legal Guardianship
- (5) referred for permanent placement with a fit and willing relative; or
- (6) in cases where YSS has concluded, after considering reunification, another permanent placement with a fit and willing relative, that the most appropriate permanency plan for a child is placement in another planned permanent living arrangement, YSS will document to the Court the compelling reason for the alternate plan.

(c) Additional Considerations

The Court shall consider the following:

- (1) whether YSS has made active efforts to alleviate and eliminate the need for removal of the child from parental care;
- (2) whether YSS has engaged in concurrent planning to develop an alternative permanent plan for the child in the event that the parent is unable to improve his/her circumstances sufficiently to retrieve custody of the child;
- (3) why permanent plans, other the ones selected, are not in the best interests of the child and that this is the least restrictive placement for the child;
- (4) in all cases in which the court does not direct the filing of the petition to terminate parental rights the, court shall specify compelling reasons why termination of parental rights would not be in the best interests of the child. Such compelling reasons might include:
  - (A) Maintaining a connection between the parent, extended family, and community is in the best interest of the child.
  - (B) A Traditional Adoption is in the best interest of the child.
  - (C) Grounds for termination (as defined in (e) below) do not exist.
  - (D) Assess YSS's concurrent case planning and efforts to effect an alternative permanent plan in the event there is insufficient progress to restore custody;
- (5) If the child has not been returned to the custody of his or her Parent/Guardian/Caretaker at the Permanency Hearing, or if the child has been in foster care for 15 of the most recent 22 months, the Court shall order a hearing under Chapter 8, unless the child is being cared for by a

relative, YSS has documented in the case plan a compelling reason for not filing to terminate parental rights, or YSS has not provided to the family services that YSS deemed necessary for the safe return of the child when active efforts to reunify are required.

- (A) In the case of a child who will not be returned to the parent, the hearing shall consider in-State/Tribal service area and out-of-State/Tribal service area placement options;
  - (B) In the case of a child placed out of the State/Tribal service area in which the home of the parent(s) of the child is located, the hearing shall determine whether the out-of-State/Tribal service area placement continues to be appropriate and in the best interests of the child;
  - (C) In the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living.
- (d) Procedural Safeguards
- (1) In any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, procedural safeguards shall be applied to assure the court consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child. These safeguards might include a hearing in chambers outside the presence of parties considering the child's age and stage of development. In such a case, the parties will be entitled to a read back of the testimony transcript or a summary from court or counsel of the testimony.
  - (2) Procedural safeguards are also to be applied with respect to parental rights pertaining to the removal of the child from the home of his/her parent(s), to a change in the child's placement, and to any determination affecting visitation privileges of parents.
- (e) Long Term Foster Care
- Long-term foster care arrangement with non-relatives cannot be considered acceptable permanent placements unless there are specific reasons documented by the agency on a case-by-case basis as to why this should be permitted.
- (f) Findings
- The required findings at the Permanency Hearing are the same as those of a Status Review Hearing, outlined in Section 1703(d)(2)(D) herein, with the addition of the findings around the child's permanency plan outlined in 1703(e)(2) herein.

## **CHAPTER 8. TERMINATION OF PARENTAL RIGHTS**

### **SECTION 1801. Procedure for Filing a Petition to Terminate Parental Rights**

On behalf of YSS, the Office of the Tribal Attorney or other designated official shall either file a

petition, or seek to be joined to a petition filed by another party, to terminate parental rights of the child's parent(s) in the following circumstances:

- (a) When a child has been in foster care under the responsibility of YSS for 15 of the most recent 22 months, the petition to terminate parental rights must be filed by the end of the child's 15th month in foster care.
  - (1) In calculating when to file a petition for termination of parental rights, YSS:
    - (A) will calculate the 15 out of the most recent 22 month period from the date the child entered foster care (as defined in Section 1801 of this Ordinance);
    - (B) will use a cumulative method of calculation when a child experiences multiple exits from and enters into foster care during the 22 month period; and
    - (C) will not include trial home visits or runaway episodes in calculating 15 months in foster care.
  - (2) YSS will only apply this requirement to a child once.
- (b) When a court of competent jurisdiction has determined a child to be an abandoned infant as defined in Section 1008(c) herein, the petition to terminate parental rights is to be made within 60 days of the judicial determination.
- (c) When a court of competent jurisdiction has made a determination that the parent has:
  - (1) Committed murder of another child of the parent;
  - (2) Committed voluntary manslaughter of another child of the parent;
  - (3) Aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or
  - (4) Committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent the petition to terminate parental rights is to be made within 60 days of a judicial determination that active efforts to reunify the child and parent are not required.
- (d) A finding by the tribal court or court of competent jurisdiction has determined the parent is guilty of aggravated circumstances, as defined by Section 1008(f) herein.

#### **SECTION 1802. Election to Not File**

YSS may elect not to file a petition or join a petition or terminate parental rights if:

- (a) At the option of YSS, the child is being cared for by a relative;
- (b) YSS has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child. Compelling reasons might include, but are not limited to:
  - (1) Maintaining a connection between the parent, extended family, and community is in the best interest of the child;

- (2) A Traditional Adoption is in the best interest of the child; or
- (3) Grounds for termination do not exist.
- (c) The Tribe has not provided to the family of the child, consistent with the time period in the case plan, such services as the Tribe deems necessary for the safe return of the child to the child's home, if active efforts are required to be made with respect to the child
- (d) Where Section 1802(a) applies, the Office of the Tribal Attorney, or other designated official, shall file a petition to terminate the parental rights of the child's parent(s) (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption pursuant to the provisions of the Adoption and Protective Parent definitions above.

**SECTION 1803. Grounds for Granting Petition to Terminate Parental Rights**

Before granting any Termination of Parental Rights, Yurok Social Services must ensure the child is officially enrolled in the Yurok Tribe. The Court shall make a determination that it is in the best of interests of the child to grant a petition to terminate parental rights and all the following grounds must be met before granting:

- (a) Failure to reunify despite the provision of active efforts on the part of YSS;
- (b) There was a judicial determination by tribal court or another court of competent jurisdiction that the parent is guilty of aggravated circumstances under Section 1008 (f) herein which excused the implementation of reunification services; and
- (c) The Court finds specific circumstances of each individual case that the child cannot safely be returned home because of the risk of harm by the parent or the inability of the parent to provide for the child's basic needs;
- (d) The Court finds it is in the best interest of the child;
- (e) In the case of termination of the rights of both parents, a Protective Parent as defined in Section 1008 herein is available and willing to accept such appointment on behalf of the child; and
- (f) There is a method to maintain the child's connection to family, culture, community and tribal enrollment status.

**SECTION 1804. Adoption**

This court has the authority to establish a Traditional Adoption or an Adoption with Termination of Parental rights as follows:

- (a) Traditional Adoptions are adoptions which do not include a termination of parental rights. The biological parent(s) responsibilities, including child support obligations shall be terminated.
  - (1) A Protective Parent shall be named pending the finalization of the adoption. The Protective Parent(s), when the adoption is finalized, shall permanently

have all of the rights and responsibilities of the biological parent(s). The biological parent(s) shall maintain their identity as biological parent(s) and the relationship of the child shall be maintained with the extended family of the biological parent(s). The child shall continue to retain all rights of enrollment and inheritance that stem from the biological parent(s) and family.

- (b) Adoptions with termination of parental rights entered into pursuant to the provisions of the Adoption and Protective Parent definitions in Section 1008 herein;
  - (1) A Protective Parent(s) shall be named when this court has terminated the parental rights and responsibilities of a Parent pending the finalization of the adoption. Protective parent status will be found by the court when the court determines, in the best interests of the minor, that the proposed prospective parent should be granted this status. The Protective Parent shall permanently have all the rights and responsibilities of the biological parents when the adoption is finalized. The child shall continue to retain all rights of enrollment and inheritance that stem from the biological parent(s) and family.
- (c) Where this court is considering the granting of an adoption, the court may establish a Protective Parent relationship, pending the finalization of the adoption.
- (d) The Court will use the following to determine whether to establish the legal relationship of adoption as described above. The factors to be considered in the determination on whether to grant the adoption shall include, but not be limited to, the following:
  - (1) Failure to reunify despite the provision of active efforts on the part of YSS;
  - (2) A judicial determination by tribal court or another court of competent jurisdiction that the parent is guilty of aggravated circumstances under Section 1008(f) herein, which excused the implementation of reunification services;
  - (3) The Court finds specific circumstances of each individual case that the child cannot safely be returned home because of the risk of harm by the parent or the inability of the parent to provide for the child's basic needs;
  - (4) There is a method to maintain the child's connection to family, culture, community and tribal enrollment status;
  - (5) The Court finds it is in the best interest of the child; and
  - (6) A "Protective Parent" is available and willing to accept such appointment on behalf of the child; or
- (e) When considering an Adoptions and prior to the finalization of an Adoption, the child shall be evaluated for eligibility for the Adoption Assistance Program (AAP). The AAP removes or reduces barriers to the adoption of children who otherwise would not achieve permanency, in that the program provides necessary financial assistance to families who are willing and able to assume parental responsibility for children but are preventing from doing so by inadequate financial resources.

Requirements for the implementation of this section shall be specified by the YSS in the Indian child Welfare Policies and Procedures Manual.

(f) Order of Adoption

Following a hearing in which the Tribal Court determines that the Petition for Adoption should be granted, the Court shall issue an order entering an Order Of Adoption. The order shall address the following:

- (1) That the child is eligible and suitable for adoption and that the adoptive parent (or protective parent) is capable of providing proper care for the child;
- (2) Right and liabilities of the natural parents (including inheritance and enrollment);
- (3) Visitation, if any, of the parties or others;
- (4) Cultural and Tribal connections that will be preserved under the adoption;
- (5) Where the adoption includes a signed agreement between the adoptive parent(s) (or protective parent) and the biological parent(s), the Court shall incorporate the agreement into its Order to provide judicial review in the event of noncompliance;
- (6) That the Court will facilitate the change of the child's last name to that of the adoptive parent (or the protective parent) if it finds that it is in the best interest of the minor to change the last name. The Court will take into consideration the preference of the minor, if appropriate, in determining whether to change the child's last name;
- (7) That the child is entitled to the same rights as a biological child of the adoptive parents (or the protective parent);
- (8) That the adoptive parents (or Protective Parent(s)) have no authority to relinquish the child's membership in the Yurok Tribe;
- (9) The effective date of the Order of Adoption; and
- (10) That an Order of Adoption has been prepared and will be provided by the Court to the California Department of Public Health Vital Records.

(g) Changes to Birth Certificate Following Adoption

The Court will issue an Order of Adoption and the Court Clerk will coordinate the amendment of the minor's birth certificate if necessary, according to the following procedures:

- (1) The Court Clerk will issue a completed Court Report of Adoption Form to the State of California in order to facilitate a new birth certificate. Upon receipt of the Court Report of Adoption Form, the California Department of Public Health Vital Records will be able to issue the new birth certificate.
- (2) The information provided in the Court Report of Adoption is used to locate and seal the original birth record of the adopted child and to prepare the new birth certificate. The Court Report of Adoption contains the child's original

birth name, sex, date and place of birth, physician's or attendant's name, and the natural parents' names, as well as the child's new name and information about the adoptive parents.

- (3) Adoptive Birth Certificate: Within 10 days of the issuance of the Order of Adoption, the Court shall mail the Order of Adoption Form to the California Department of Public Health Vital Records. The Order of Adoption Form shall set forth the full name, sex, date and place of birth, and names of biological parents, in order that a new record of birth in the child's new name and with the name of the adoptive parents may be recorded.

- (h) This Court has the authority to give full faith and credit to adoptions granted under the laws of another Tribe, State, or Nation having jurisdiction over the parties and the subject matter including a California Tribal Customary Adoption granted pursuant to California Welfare & Institutions Code Section 366.24.

### **SECTION 1805. Kinship Care/Guardianships**

The Court may, upon petition to the Court, make determinations of temporary and permanent legal guardianship. The Court may make these findings only after proper notice to the parents and family members and an opportunity for interested persons to respond or appear at any court hearing on the proposed Guardianship.

- (a) The Petition to Establish a Guardianship can be initiated by petition from the following persons:
  - (1) Yurok Social Services;
  - (2) Any prospective Guardian; and/or
  - (3) Any other interested person or family member.
- (b) The Petition to establish Guardianship must be filed in Yurok Tribal Court and served on the parents if their whereabouts are known. The Petition will be properly noticed and the parties be given an opportunity to respond. The Petition will be set for hearing.
- (c) Findings
  - (1) The court may appoint guardianships over a child under the following circumstances.

The child has been:

    - (A) Removed from his home pursuant to a voluntary agreement or as a result of a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child;
    - (B) Eligible for foster care maintenance payments for at least six (6) consecutive months while living in the home of the prospective relative Guardian (whether or not the child actually received payments);
    - (C) Returning the child home and adoption is not appropriate permanency options;

- (D) The child has a strong attachment to the proposed Guardian and has been consulted about the guardianship if 14 years of age or older;
  - (E) The Guardian has a strong commitment to permanently care for the child;
  - (F) Active efforts have been provided to place the child and siblings removed from their home in the same guardianship unless YSS documents that such a joint placement is contrary to the safety or well-being of the child or any siblings; and
    - (i) In the case of a sibling removed from the home who is not so jointly placed, the order shall provide for frequent visitation or other ongoing interaction between the siblings, unless YSS documents that frequent visitation or other ongoing interaction between the siblings, be contrary to the safety or well-being of any of the siblings;
    - (ii) Each sibling in the same sibling group placement is eligible, providing at least one sibling meets all eligibility criteria under this rule, regardless of the timing of each individual placement.
  - (2) The Court shall grant the Petition to Establish Guardianship if it finds that granting the Guardianship would be in the best interest of the child.
- (d) Kinship Guardianship Agreement
- (1) In order to be eligible for the Kinship Guardianship Assistance Payments, there must be a written kinship guardianship agreement executed prior to the establishment of the guardianship. Requirements for the implementation of this section shall be specified by the YSS in the Indian child Welfare Policies and Procedures Manual.
  - (2) A copy of the agreement shall be provided to the prospective relative guardian.
- (e) Guardianship Order
- (1) Following a hearing in which the Court determines that a Guardian shall be appointed, the Court shall issue an order setting forth its findings, appointing the guardian, and addressing the following:
    - (A) Services. Any continued services YSS consents to provide;
    - (B) Scope. The term of guardianship and the rights and duties of the Guardian including the Guardian's responsibilities related to annual reviews;
    - (C) Other. Any other provision to benefit the child's continuing safety and well-being;
    - (D) Letter of Guardianship. A certified copy of the letter of guardianship will be prepared and attached to the order; and

- (E) Final Order. A guardianship order is a final order for purposes of appeal. Upon issuance of a final order of guardianship arising out of a dependency case, the dependency case shall terminate and the child shall continue as a ward of the Court under the guardianship provisions of this Ordinance. Upon issuance of a final order of guardianship in a non-dependency case, the child shall be ward of the Court.
- (f) Term, Rights and Duties of Legal Guardian. A Legal Guardian appointed by the Court shall:
  - (1) Have custody, and be responsible for all care, of the child and the care and management of his/her property until the child reaches eighteen (18) or, where circumstances of the child require, until the child reaches nineteen (19) years of age or twelve (12) months after the child graduates from high-school, whichever is later, marries, is emancipated by a court of competent jurisdiction, or until the legal Guardian is legally discharged;
  - (2) Have the authority to consent to the medical care and treatment of the child, and to otherwise have those rights of a parent of the child, including protection, education care and control of the person, and decision making;
  - (3) Be responsible for reporting to the Court every six (6) months during the first two years of the guardianship and annually thereafter, or more often as required by the Court; and
  - (4) Have the authority, but only with the express written consent of the Court, to dispose of any real property or Tribal member benefits of the child.
- (g) The requirements for the implementation of this section shall be specified by the YSS in the Indian Child Welfare Policies and Procedures Manual and the YSS shall be authorized to evaluate and implement modifications as necessary in order to provide guardianship assistance payments under California's kinship guardianship assistance program.

**SECTION 1806. Transfer from other Jurisdictions and/or Transfer under the Indian Child Welfare Act, 25 U.S.C. § 1900 et. seq., and/or Concurrent Jurisdiction with other Jurisdictions**

- (a) Transfer of Jurisdiction to Tribal Court

The Yurok Tribal Court is authorized to formally accept the transfer of jurisdiction from any state or other tribal court, so long as the other Tribe's governing body has validly consented in writing to the transfer of jurisdiction.

- (1) A party interested in transferring jurisdiction to Tribal Court must first file a petition to transfer, along with any supporting documentation, stipulations or legal authorities, as appropriate or necessary, with the Tribal Court.
- (2) Upon issuance of a Tribal Court order accepting transfer of jurisdiction, the transferring court shall consider the transfer. Both courts must approve of the transfer.

- (3) The transferring court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. Sec. 1901-1963, where they do not conflict with the provisions of this Ordinance.
  - (4) After another court transfers a case to the Tribal Court’s jurisdiction and transmits all documents and legal and social records, the Tribal Court shall proceed with the case as if the petition had been originally filed in the Tribal Court.
- (b) Certification of Cases Transferred Under Indian Child Welfare Act
- In cases transferred to the tribal court under the Indian Child Welfare Act (“ICWA”), 25 U.S.C. 1911 (b), the court may adopt the state court’s certification of aggravated circumstances or hold its own hearing regarding the existence and applicability of an aggravated circumstances determination by the state under this chapter.
- (c) Concurrent Jurisdiction Cases
- YSS or another jurisdiction may petition the court to jointly and/or concurrently supervise cases which are within the subject matter jurisdiction of this Ordinance. The petition and subsequent order will specifically delineate the responsibility of each jurisdiction.

**SECTION 1807. CASA**

- (a) Court Appointed Special Advocates (CASA) Appointments
- At any stage of the proceedings conducted under this Ordinance, the Tribal Court may appoint a CASA for the child when, in the opinion of the judge, a child requires services which can be provided by the CASA, consistent with the Rules of Court.
- (1) CASA Qualifications and Duties:
    - (A) A “CASA” is a person who has been recruited, screened, selected, and trained, in accordance with National CASA Association Standards who is being supervised and supported by the Tribal CASA program, and who has been appointed by the court as a sworn officer of the court to help define the best interests of a child or children in juvenile and ward ship proceedings
    - (B) The duty of the CASA is to represent the interests of the child, and he or she shall be a party to the proceedings. A child fourteen (14) years of age or older is presumed capable of determining what is in his or her best interests. It is the duty of the CASA to represent the child’s wishes in such cases. For children under fourteen (14) years of age, the CASA shall make a determination as to the best interests of the child regardless of whether that determination reflects the wishes of the child. However, the wishes of the child are always relevant to the determination of best interests and shall be weighed according to the competence and maturity of the child.
    - (C) Tribal CASAs must be duly qualified and appointed pursuant to the Tribal CASA program guidelines and policies prior to working on any

case and receiving confidential information.

- (D) The Tribal Council through its CASA Advisory committee shall adopt guidelines for the screening of CASA volunteers, which shall include personal interviews, reference checks, check of records of sex offences and other criminal records, information from the department of Motor Vehicle, and other information as the Tribal Council deems appropriate.
- (E) Each CASA is an officer of the Court, with the relevant rights and responsibilities that pertain to that role and shall act consistently with the rules of court pertaining to CASA's
- (F) Each CASA shall be sworn in by a court judge, associate, or commissioner before beginning his or her duties.

## **CHAPTER 9. EXTENDED FOSTER CARE**

### **SECTION 1901 Extended Foster Care**

- (a) Extended Foster Care may be authorized under this Ordinance to include transitional support to youth including Extended Foster Care assistance to foster youth that are 18 years of age and up to age 21 that meet at least one of the five following participation criteria:
  - (1) Be enrolled in a high school or an equivalency program (under AB 12, NMDs do not have to complete high school by age 19 to be eligible);
  - (2) Be enrolled in post-secondary education or vocational school;
  - (3) Participate in a program or activity that promotes or removes barriers to employment;
  - (4) Be employed at least 80 hours per month; or
  - (5) Is deemed incapable of participating in any activity as described above due to a documented medical condition.
- (b) This Court has the authority in development of a service plan under this section, to consider or approve additional programs and options to assist the youth, including Independent Living Services that are or may become available under Yurok tribal programs, the State of California or other options as they may arise.
- (c) Requirements, for the implementation of Extended Foster Care shall be specified by the YSS in the Indian Child Welfare Policies and Procedures Manual.

## **CHAPTER 10. CONFIDENTIALITY**

It is the intention of the Tribe that this Ordinance shall be consistent with the provisions set forth in California's Welfare and Institutions Code section 10850 related to the confidentiality of records and information concerning individuals receiving public social services. This will not impact YSS's ability

to provide information to service providers for the purpose of making referrals or comply with case plans developed under this Ordinance.

## **CHAPTER 11. PLACEMENT**

### (a) Placements

- (1) No child that is under the jurisdiction of the court pursuant to this Ordinance, shall be placed in a home unless, all adults who resides in the home, anyone who is employed in the home, or that has an intimate relationship with the applicant, has met the background check requirements in section (2).
- (2) To be approved, all individuals identified in paragraph (1) above must provide background information and must successfully complete a Criminal and Child Abuse Background Check that is in accord with the standards set forth in California's Health and Safety Code Sections 1522 and 1522.1.
- (3) A criminal records check may be conducted pursuant to this section on any person over 14 years of age living in the home who the YSS worker believes may have a criminal record.
- (4) In any out of home placement of a child, a preference shall be given, in the absence of good cause to the contrary, to a placement with:
  - (A) A member of the child's extended family;
  - (B) A foster home licensed, approved, or specified by YSS;
  - (C) An Indian foster home licensed or approved by an authorized non-Yurok licensing authority; or
  - (D) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child's needs.
- (5) Any child accepted for foster care or pre-adoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child.
- (6) The approved applicants have or agree to attend an orientation within two weeks, on the rights of children placed in their care, agree to complete training on foster care standards and expectations, including on the Reasonable and Prudent Parent Standard applicable to making decisions related to the child's activities.

**C\*E\*R\*T\*I\*F\*I\*C\*A\*T\*I\*O\*N**

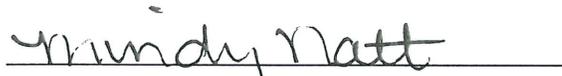
THE FOREGOING ORDINANCE, ENTITLED THE YUOK CHILDREN'S ORDINANCE, WAS PASSED AT A REGULARLY SCHEDULED MEETING OF THE YUOK TRIBAL COUNCIL ON MARCH 24, 2016, AT WHICH A QUORUM WAS PRESENT, AND THIS ORDINANCE WAS ADOPTED BY A VOTE OF 6 FOR, 0 OPPOSED AND 1 ABSTENTIONS IN ACCORDANCE WITH ARTICLE IV, SECTION 5(j) OF THE CONSTITUTION OF THE YUOK TRIBE.

**DATED THIS 24 DAY OF MARCH 2016**



Thomas O'Rourke, Sr., Chairperson  
Yurok Tribal Council

**ATTEST:**



Mindy Natt, Secretary  
Yurok Tribal Council