

YUROK TRIBE CHILDREN'S CODE

Authority:

The Yurok Tribal Council is the duly elected and authorized Governing body of the Yurok Tribe; a federally recognized Indian Tribe which is eligible for all rights and privileges afforded to a federally recognized Indian Tribe and, as such, enacts this ordinance by the power and authority granted under the Yurok Tribal Constitution. Article IV, Section 5(a) states that the Tribal Council may "enact legislation, rules and regulations not inconsistent with this constitution to further the objectives of the Yurok Tribe..."

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 break down 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 Code, 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.

Jurisdiction:

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 1 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 code 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, 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 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.

DEFINITIONS:

Yurok Child:

Any minor child of a present or deceased Yurok Tribal member including any adopted child of such a member. Enrollment or eligibility for enrollment is not a prerequisite for inclusion within this definition for the purposes of this code.

Delinquent Child:

1. 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 code enacted by this tribe.
2. A child who has been found in a Court or other appropriate proceeding, to have committed repeated delinquent acts, and whose parent or custodian is unable or unwilling to control such behavior.

Dependent Child:

A child who is in need of the intervention of the Tribe's tribal court to insure that their rights as a child to a safe and nurturing environment are being met by the parental figure who has the care of the child. Nothing in these definitions shall be used to interfere with or prohibit the cultural and spiritual development and with traditional child-raising practices of the child's family or Tribe.

Adoption

An adoption of another jurisdiction will be recognized by the Yurok tribe so long as the laws of that jurisdiction have been followed. However, no adoption of a Yurok child shall occur in this court unless and until the birth parent(s) of said child have consented to said adoption. If said birth parents are not available to consent by reason of their death or incompetence or a reasonable and diligent search does not result in the location of such parent the court may consider a request for termination of parental rights and adoption accompanied by an affidavit or testimony that the surviving/remaining family of the parent(s) support the termination of parental rights and adoption of the minor child by the applicant.

Protective Parent

A protective parent(s) shall be named when this court has terminated the parental rights and responsibilities of a parent or guardian. The protective parent shall permanently have all the rights and responsibilities of the former parents. The former parents however shall maintain their identity as parents and the relationship of the child shall be maintained with the extended family of the identity parents. Specifically include are all rights of enrollment and inheritance from the identity parent and family.

A protective parent may be appointed with or with out the consent of the identity parent.

CASA:

Court Appointed Special Advocate. A Volunteer appointed by the Court to represent the individual needs of the dependent child.

Caretaker:

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.

CAPTA:

Child Abuse Prevention and Treatment and Adoption Reform Act

Indian Custodian:

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.

Advisor to Tribal Court

The parent(s)/guardian/custodian/caretaker may nominate a member of their family or an elder or other person known to them to act as an advisor to the court or the court may nominate a person 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 code 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.

Withholding of Medically Indicated Treatment:

The term "withholding medically indicated treatment" includes 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 ameliorating 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--

- (a) the child is chronically and irreversibly comatose;
- (b) the provision of such treatment would--
 - (i) merely prolong dying;
 - (ii) not be effective in ameliorating or correcting all of the child's life-threatening conditions; or
 - (iii) otherwise be futile in terms of the survival of the child; or
- (c) 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.

Abandonment

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

- (a) 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;
- (b) intentionally leaves the child without affording means of identifying the child and the child's parent or caretaker;
- (c) 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;
- (d) in the case of a non-custodial parent:
 - (i) makes only minimal efforts to support and communicate with the child;
 - (ii) fails to maintain regular visitation with the child for a period of six (6) months;
 - (iii) fails to participate in a suitable plan or program designed to reunite the parent with the child;
- (e) failed to respond to notice of child protection proceedings;

The term "abandonment" does not include where a parent or caretaker:

- (a) places his or her child with an extended family member; or
- (b) 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.
- (c) has established an Indian Custodianship.
- (d) has been deployed as an active member of the military.
- (e) has been incarcerated or is medically or psychologically incapacitated.
- (f) 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.

A finding of abandonment requires that the parent/guardian/caretaker/Indian custodian 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 seek 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

Child in Need of Aid:

The court may find a child to be a child in need of aid (“CINA”) if it finds by a preponderance of the evidence that the child has been 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 or custodian has abandoned the child, and the other parent is absent or has committed conduct or created conditions that cause the child to be a CINA under this Subchapter;
2. The child has been neglected as described,
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 has suffered emotional damage or mental injury, or there is substantial risk that the child will suffer emotional damage or mental injury;
8. The parent or custodian’s 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
9. The parent or custodian 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.

CHAPTER 1: Voluntary Informal Conference

SECTION 1: Authority:

Yurok Social Services shall hold an informal conference with the minor's parent(s), guardian or custodian to discuss alternatives to the filing of a petition if:
a. the alleged facts bring the case within the jurisdiction of the Children's Court;

- b. the informal adjustment of the matter would be in the best interests of the minor and the Tribe; and
- c. the minor and the minor's parent(s), guardian or custodian voluntarily consent to an informal adjustment.

This section does not authorize Yurok Social Services 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.

SECTION 2: Notice:

Notice of the informal conference shall be given to the minor and his parent(s), guardian(s) or custodian(s) and their counsel 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 minor-in-need-of-care allegation is based.

SECTION 3: Confidentiality:

No statement made during the informal conference may be admitted into evidence at an adjudicatory hearing or at any proceedings against the minor.

SECTION 4: Disposition:

At the informal conference, Yurok Social Services may:

- a. refer the minor and the minor's parent(s), guardian or custodian to an available program or service provider for needed assistance;
- b. arrange terms of supervision calculated to assist and benefit the minor, which regulate the minor's activities and which are within the ability of the minor to perform; or
- c. recommend that the presenting officer file a petition for removal pursuant to Chapters 5&6 of this Code.

Yurok Social Services shall set forth in writing the conclusions reached at the informal conference and the disposition agreed to by the parties for remedying the situation.

Any informal adjustment period shall not exceed six (6) months.

CHAPTER 2: ABUSE

SECTION 1: Physical Abuse

For the purposes of this chapter, 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.

The term "physical injury" includes, but is not limited to, any case in which:

- (a) 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 (b) such condition is not justifiably explained, is not the product of an accidental occurrence, or within the parameters of cultural or religious practices. 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.¹

SECTION 2: 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.

The term “sexually explicit conduct” includes, but is not limited to, actual or simulated:

- (a) 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;
- (b) bestiality;
- (c) masturbation;
- (d) lascivious exhibition of the genitals or pubic area of a person or animal; or
- (e) sadistic or masochistic abuse;

The term “sexual exploitation” includes, but is not limited to:

- (a) 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;
- (b) 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.

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 3: 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 spiritual² health and development, though:
 - (i) the parent or caretaker is financially able to do so; or
 - (ii) public assistance and service programs are reasonably available if the parent or caretaker is indigent;
- (b) has abandoned the child; and
- (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) where the parent 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.
- (f) failure to protect the child from the known company of a registered sex offender.

SECTION 4: Psychological Maltreatment

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.

The term “mental injury” includes, but is not limited to, spurning, terrorizing, isolating, exploiting or corrupting, denying emotional responsive 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.

This includes the failure to protect the child from a repetitive exposure to domestic violence between the parents.

CHAPTER 3: INVESTIGATION & REPORTS:

SECTION 1: Receipt of reports of child maltreatment, investigation and written reports, and cross-notification.

1. Requirement that social services agency investigates prior to the filing of petition.

Prior to the filing of a Child in Need of Aid (CINA) petition under this chapter, the social services agency shall investigate all reports of child maltreatment and, if appropriate, proceed according to the provisions of this chapter.

2. Cross-notification of child maltreatment reports.

(a) When the law enforcement agency or the social services agency receives an initial report from any person of--

(1) the maltreatment of any child within the territorial jurisdiction of the Tribe, or

(2) actions which would reasonably be expected to result in abuse of a child within the territorial jurisdiction of the Tribe, 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 subsection 3 to such agency.

(b) 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. Written report of child maltreatment required.

(a) Within 36 hours after receiving an initial report described in subsection 2, the receiving agency shall prepare a written report which shall include, if available--

(1) the name, address, age, and sex of the child that is the subject of the report;

(2) the grade and the school in which the child is currently enrolled;

(3) the name and address of the child's parents or other person responsible for the child's care;

(4) the name and address of the alleged offender;

(5) the name and address of the person who made the report to the agency consistent with confidentiality requirements as per section 5(4) below;

(6) 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

(7) 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.

(b) Receipt of Report

(1) a.) If Yurok Tribal Police or Yurok Social Services receives a report alleging child maltreatment as described in the definitions section, above, the Yurok Social Services Department 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 Tribal Police will assist in the investigation upon the request of Yurok Social Services.

c.) If a local law enforcement agency receives a report of known or suspected child abuse or neglect, it shall first attempt to contact the Social Service Department in order to refer the case for investigation. If the local law enforcement agency is unable to contact the department, 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 Tribal Law Enforcement Agency, 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 the Social Service Department. If Yurok Social Services 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.

(2) Upon completion of the investigation of any report of alleged child maltreatment the Yurok Social Services Department 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.

4. Confidentiality of Informant.

The identity of any person making a report described in section 5(3) shall not be disclosed in the final report of YSS under Section 5(b)(2) above, 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.

SECTION 2: 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 severe physical abuse of a child, or upon investigation of a report of child maltreatment that gives rise to such a suspicion, the law enforcement agency or the social services agency, whichever agency first receives the report of child maltreatment, shall notify the tribal prosecutor who shall convene a multi-disciplinary team to provide services including:

- (1) medical diagnoses and evaluation services, including provision or interpretation of x-rays, laboratory tests, and related services, as needed, and documentation of findings;
- (2) telephone consultation services in emergencies and in other situations;
- (3) medical evaluations related to maltreatment;
- (4) psychological and psychiatric diagnoses and evaluation services for the child, parent or parent, guardian or guardians, or other caregivers, or any other individual involved in a child victim or child witness case;
- (5) expert medical, psychological, and related professional testimony;
- (6) case service coordination and assistance, including the location of services available from public and private agencies in the community; and
- (7) 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 3: Scope of Investigation and Written Report.

The responsible agency shall initiate an investigation when an allegation is made that a child has been maltreated, or that actions may be taken which would reasonably be expected to result in maltreatment of a child. In the course and scope of the investigation, the responsible agency shall:

- (1) Attempt to 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;
- (2) Attempt to visit the home and/or place where the child is residing;
- (3) 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;
- (4) Determine if the child can remain safely in the home with services provided, and assist in providing those services;
- (5) 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;
- (6) 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

(7) 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 4: Mandate to develop, adopt and implement investigation protocols.

The tribal prosecuting attorney, the law enforcement agency, and the social services agency shall adopt and implement standard child abuse and neglect investigation and interview protocols using a model tribal or state protocol.

SECTION 5: 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 Social Services to implement a Family Conferencing Plan as part of the services offered to the family. In any cases of an inconclusive report social services shall offer to the family appropriate services including a Family Conferencing Plan.

SECTION 6: 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:

- (1) Close the case if the agency determines that the child is not a Child in Need of Aid (CINA) or at risk of becoming a CINA;
- (2) Keep the case open and offer family support services in order to alleviate the need for a Child in Need of Aid (CINA) petition.
- (3) Keep the case open and offer to schedule a Family Group Conference to alleviate the need for a Child in Need of Aid (CINA) petition.
- (4) File a Child in Need of Aid (CINA) petition.

CHAPTER 4: PROTECTIVE ORDERS:

SECTION 1: Removal of a Dangerous Individual from the Home Using a Protective Order

1. The tribal court may issue a written or oral emergency order for protection ex parte when a law enforcement 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.
2. The tribal 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 2: Temporary Emergency Child Protection Restraining Order

1. Definitions

(a). "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:

- (i) Attempting to cause or causing physical harm to another family or household member;
- (ii) Placing a family or household member in fear of physical harm;
- (iii) Causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress.

(b) "Family or household members" include:

- (i) Adults or minors who are current or former spouses;
- (ii) Adults or minors who live together or who have lived together;
- (iii) Adults or minors who are related by blood or adoption;
- (iv) Adults or minors who are related or formerly related by marriage; (v) Persons who have a child in common; and
- (v) Minor child of a person in a relationship that is described in paragraphs (i) through (iv).

2. Eligible Petitioners for Order

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.
- (c) An agency, or its representative, designated by law to file such a petition.

3. Uniform Form Required for Petitions and Orders; Required Statements in Petitions and Orders; Duty of Clerk to Provide Petitions and Clerical Assistance

- (a) The tribal court shall:

- (i) Develop and adopt uniform forms for petitions and orders for temporary emergency child protection restraining orders; and
- (ii) Provide the forms to the clerk of the court authorized to issue such orders.

(b) The petition for a temporary emergency child protection restraining order must contain the following information:

- (i) A statement listing each civil or criminal action involving both respondent and petitioner;
- (ii) 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";
- (iii) Any other information the tribal court deems necessary.

(c) The clerk of the court shall provide to a person requesting an order for protection:

- (i) The forms adopted pursuant to subsection (a);
- (ii) 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
- (iii) 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 tribal court may issue a written or oral emergency order for protection ex parte when a law enforcement 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 law enforcement officer who receives an oral order of protection from a court shall:

- (i) Write and sign the order on the form required pursuant to Section 3;
- (ii) Serve a copy on the respondent;
- (iii) Immediately provide the petitioner with a copy of the order; and
- (iv) 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 tribal court shall direct local law enforcement 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 tribal 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 tribal 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 1: Entity Responsible for Taking Emergency Custody of Children

The Yurok Social Services Department and the Yurok Tribe Department of Public Safety shall be designated to take a Child in Need of Aid into emergency custody under this Chapter.

SECTION 2: Taking a Child into Emergency Custody

A.) The tribal representative shall take a child into custody if:

1. An emergency custody order has been issued by the court for the child following a hearing pursuant to this statute; and/or;
2. He or she has reasonable grounds to believe that the child is a Child In Need of Aid (CINA) and that one or more of the conditions that would make the child a CINA exist,
or;
3. The representative has reasonable grounds to believe the child has run away,
or;
4. The child requests to be placed in emergency custody.

B.) In any of the aforementioned situations, the representative taking the child into custody shall immediately implement an investigation as outlined above.

SECTION 3: Notice of Removal to the Parent, Guardian or Custodian

A. The removing agency shall make all reasonable efforts to notify the parents, guardian or custodian within twelve (12) hours of the child's removal.

B. Reasonable efforts shall include personal, telephone and written contacts at the parents, guardian's or custodian's residence, place of employment, or other location where the parent, guardian or custodian is known to frequent with regularity.

C. If the parent, guardian or custodian cannot be found, notice shall be given to an extended family member of the child and of the parent, guardian or custodian.

SECTION 4: Notice of Removal to the Court

After a child is removed from his home, the removing agency shall notify the court in writing within seventy-two (72) hours or by e-mail with a follow up in person or by phone as soon as reasonably practical thereafter.

CHAPTER 6 EMERGENCY CUSTODY HEARING:

SECTION 1: Filing of an Emergency Petition

1. Within seventy-two (72) hours of the removal of a child or on the next regular court business day, whichever comes first, the Tribal Social Services Department shall file a petition for emergency custody with the Court.
2. If no petition is filed, the child shall be released within seventy-two (72) hours from when he was taken into emergency custody.

SECTION 2: Delivering the Child into Custody

The tribal representative who takes a child into custody shall:

1. Release the child to his parent, guardian or custodian 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, Yurok Social Services 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 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 or custodian within three Court 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.

SECTION 3: Emergency Custody Petition

In order to request an extension of emergency custody, the department must file a petition alleging that probable cause exists to believe that the child is a Child In Need of Aid (CINA) and that one or more of the conditions that would make the child a CINA exist.

Any petition filed under this section must include allegations that:

1. The child is suffering from an illness or injury, and no parent or custodian is providing adequate care for him, or;
2. 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, or;
3. The child will be subject to injury or abuse by others or by himself if not placed in custody by the court, or;
4. The child has been abandoned by his parent, guardian caretaker, or custodian, or;
5. No parent or custodian is able or willing to provide adequate supervision and care for the child; or
6. The child will run away or be taken beyond the jurisdiction of the court, and will be unavailable for further proceedings.

(b) 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.

(c) 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 parents, guardians or custodians 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.

SECTION 4: Hearings and Notice

The parents, guardian, caretaker, or custodian of a child taken into emergency custody shall be given reasonable notice of the time and place of the emergency custody hearing.

SECTION 5: Dismissal for Failure to Notify

1. When a child is taken into emergency custody and an emergency custody hearing is pending, the tribal representative shall notify the child's parents, guardian, caretaker, or custodian within twenty-four (24) hours.
2. If Tribal Social Services is unable to demonstrate proof of reasonable attempts to notify the parents, guardian or custodian, the Court shall review the child's temporary placement and the safety of the child and determine how best to proceed. The Court may dismiss the petition and order that the child be returned home for failure to properly notify the parents, guardian or custodian of the emergency custody hearing.

SECTION 6: Purpose

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

SECTION 7: Persons Present; Hearsay Evidence

- (a) Unless requested by a parent, guardian, caretaker, or custodian 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.
- (b) A report prepared by the Tribal Social Services Department, 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 child in need of aid] may be based.
- (c) 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.
- (D) A Court Appointed Special Advocate shall be appointed to any unrepresented child in all Court proceedings pursuant to Chapter 9 of this Code. 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.

SECTION 8: Timing of Emergency Custody Hearing

The court shall immediately, and in no event more than three Court 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, or custodian 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 child in need of aid. The court may

grant the request on a showing of good cause for why the parent, guardian, or custodian is not prepared to respond to the allegation. During a continuance, the child remains in the emergency custody of the tribal department of social services.

SECTION 9: Basis for Removal.

The Court may order:

(a) A child may be placed in emergency custody for up to fifteen (15) days if the tribal court at a hearing finds probable cause to believe that the child is a child in need of aid and one or more of the following conditions exists:

1. The child is suffering from an illness or injury, and no parent or custodian is providing adequate care for him, or;
2. 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, or;
3. The child will be subject to injury or abuse by others or by himself if not placed in custody by the court, or;
4. The child has been abandoned by his parent or custodian, or;
5. No parent or custodian is able or willing to provide adequate supervision and care for the child, or;
6. The child will run away or be taken beyond the jurisdiction of the court, and will be unavailable for further proceedings.

(b) 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.

(c) 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 parents, guardians or custodians 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.

SECTION 10: Reasonable Cause

(a) If the court is not satisfied by the facts alleged in the petition that reasonable cause exists to believe that:

1. The child is a Child In Need of Aid (CINA); and

2. One or more of the conditions listed in the section on grounds for emergency hearings has occurred or will occur if the child is released,

the court shall order that the child be released immediately.

(b) Finding of Reasonable Cause

If the court finds that reasonable cause does exist as to both issues, the court shall issue a written finding to that effect and may order an extension of emergency custody.

SECTION 11: Tribal Social Services to Make Prima Facie Case

The tribal social worker shall report to the court on the reasons why the child has been

removed from the parent's, guardian's or custodian's physical custody 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 child in need of aid, the court finds that continuance in the parent's, guardian's, or custodian's home is contrary to the child's welfare, and any of the following circumstances exist:

(1) There is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child's physical or emotional health may be protected without removing the child from the parent's, guardian's, or custodian's physical custody; or

(2) The child indicates an unwillingness to return home, if the child has been physically or sexually abused by a person residing in the home.

SECTION 12: Notification of Rights

(a) Right to an Attorney or Spokesperson: The Court shall advise the parties of the right to retain an attorney or a Spokesperson at their own expense, or to a Court Appointed Advocate, if applicable.

(b) Right to Present Evidence: A parent, guardian, caretaker, or custodian, or lawyer for such person, child over the age of (12) twelve, or lawyer for a child of any age, shall be given the opportunity to present evidence to the Court at the emergency custody hearing, which evidence may include evidence that the child can be returned to the parent's, guardian's or custodian's or caretaker's care pending the adjudicatory 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.

SECTION 13: Findings and Reasonable Efforts

At the emergency custody hearing, the Court must make the following findings:

- (1) That reasonable efforts have been made to prevent the removal of the child, or to return the child after the emergency removal, but that said efforts have not been successful;
- (2) That return of custody to the parents, guardian, or custodian is not appropriate because the child has suffered or is at substantial risk of suffering serious physical or emotional harm pursuant to Section 9 of this Chapter; and
- (3) Responsibility for placement and care is vested with the tribal social services department.

A. The Yurok Department of Social Services may develop and implement an alternative permanency plan for the child while simultaneously making reasonable efforts to unite or re-unite the child with his parent, guardian or custodian.

SECTION 14: Possible Emergency Custody Hearing Outcomes

(a) Disposition on Finding of Probable Cause: If the court determines there is probable cause to believe the child is a Child in Need of Care, the court may:

- (1) Continue the Petition for Emergency Custody and grant emergency custody of the child to the Tribe, and place the child in the physical custody of the parent(s), guardian, or custodian pending the adjudicatory hearing; and set an adjudicatory hearing; or
- (2) Continue the Petition for Emergency Custody and grant emergency custody of the child to the Tribe, and place the child in the physical custody of another appropriate person, or in shelter or foster care; and set an adjudicatory hearing; or
- (3) Affirm any other reasonable plan recommended by the Tribal Social Services Department and/or stipulated to by the parties, including but not limited to the postponement of proceedings; and
- (4) Order such restrictions on contact or visitation that the court deems appropriate; and
- (5) Set additional preliminary inquiry hearings or other hearings as necessary.

(b) Dismissal of the Petition:

If the court determines there is no probable cause to believe the child is a Child in Need of Care, the Petition for Emergency Custody shall be dismissed without prejudice, and the child released from emergency custody.

SECTION 15: Evidence in Emergency Custody Hearings

(a) Use of Reports: For the purpose of establishing that a child is a Child in Need of Care, 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.

(b) Right to Present Evidence: A parent, guardian, or custodian, or lawyer for a parent, guardian, caretaker, or custodian, child over the age of (12) twelve, 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 Emergency Custody Hearing. The Court may hear any evidenced 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 Adjudicatory Hearing without further jeopardy to the child's health or safety and without fear of removal of the child from the area.

SECTION 16: Court Ordered Evaluations

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

(b) The court may also order an examination of a parent, guardian, or custodian whose ability to care for the child is at issue if the court finds evidence presented at the hearing that the parent's or guardian's or custodian's physical, mental, or emotional condition 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, or custodian.

SECTION 17: Emergency Placement

A child taken into emergency custody may be placed, pending a court hearing and at the recommendation of Yurok Social Services, in one of the following placements, listed in order of priority:

1. With family or extended family members who will be able to protect the health and safety of the child;
2. With the family of a member of the tribe on the Reservation;
3. In a private foster home on the Reservation;

4. In a foster care facility on the Reservation;
5. In a shelter care facility on the Reservation; or
6. In foster home, foster care facility, or shelter care facility in the County of residence in the State of residence as the Court finds appropriate.
7. With an Indian custodian designated and approved by the court.
8. With any adult known to the child who offers a secure placement to the child and is willing to submit to receiving a clearance for the purposes of placement and supervision of said placement and is further willing to seek emergency certification as a foster placement.

SECTION 18: Secure Detention Prohibited

No child who is in emergency custody or who is determined to be a Child In Need of Aid ("CINA") shall be detained in a secure juvenile detention facility, jail, or prison for any amount of time under this statute.

SECTION 19: Visitation

(a) Responsibilities and Rights of Parents; Right to Visitation

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.

(b) Responsibilities and Rights of Extended Family Members; Right to Visitation

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.

(c) Effect on Visitation Rights of a Finding of Aggravated Circumstances.

After a finding of the existence of an aggravated circumstance with regard to a parent, guardian or custodian, caretaker, or extended family member, the court may deny that parent, guardian or custodian, caretaker, or extended family member visitation rights with respect to any child who has been adjudicated a Child in Need of Aid ("CINA").

CHAPTER 7: REASONABLE EFFORTS

SECTION 1: Reasonable [Active] Efforts Required

The Yurok Department of Social Services shall provide timely, reasonable [active] efforts to prevent removal from the home, and to unite or reunite any

child with his or her parent, guardian, caretaker, or custodian after removal from the home. The duty to make reasonable [active] efforts includes the duty to:

1. Identify family support services that will assist the parent, guardian, caretaker, or custodian in remedying the conduct or conditions in the home that created the need for removal or made the child a Child In Need of Aid (CINA);
 2. [Actively] Offer the parent, guardian, caretaker, or custodian, or refer the parent, guardian or custodian to, the services identified under Subsection (1);
 3. Initiate a Family Conferencing Plan
 4. [Actively] Refer the parent, guardian, caretaker, or custodian to community-based family support services whenever community-based services are available and desired by the parent, guardian or custodian; and
3. Document all actions taken by the Tribal Social Services Department pursuant to Subsections (1), (2), (3), and (4). Such documentation will be included in any reports made to the Court.

SECTION 2: Case reports and plans

Unless waived by the Tribal Court, the Yurok Social Services Department or other agency designated by the court shall develop a case plan in all cases. 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.

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.

The case plan shall be made available to the court, and the parties as deemed appropriate by the court at least seven (7) court days prior to the hearing at which it will be considered. The case plan for each child involved in an Indian child custody proceeding must:

- (1) be a written document that is a discrete part of the case record, in a format determined by the Tribe, which is sent to the parents or guardian(s) of the foster child;
- (2) be developed within a reasonable period, but no later than sixty (60) days from actual removal of the child;
- (3) include a description of the services offered and the services provided to prevent removal of the child from the home and to reunify the family, including a description of the appropriateness of such services;

- (4) include a description of the type of home or institution in which the child is to be placed;
- (5) include a discussion of the safety and the appropriateness of the placement and include a plan for assuring that the child receives safe and proper care;
- (6) include a discussion of the services provided to the parent(s) in order to improve the conditions in the parent(s) home to facilitate the child's return to his or her own home, or for providing a another permanent placement for the child;
- (7) include a plan for assuring that services are provided to the child and foster parents in order to address the needs of the child while in foster care;
- (8) where appropriate, for a child sixteen (16) years of age or older, include a written description of the programs and services that will help such child prepare for the transition from foster care to independent living;
- (9) in the case of a child with respect to whom the permanency plan is adoption or placement in another permanent home, document the steps the Yurok Social Services is taking to find an adoptive family or other permanent living arrangement for the child. At a minimum, such documentation shall include child specific recruitment efforts used by the Yurok Social Services;
- (10) discuss if the placement is designed to achieve placement in a safe setting that is the least restrictive (most family-like) setting available, that is in close proximity to the home of the parents, and which is consistent with the best interest and special needs of the child;
- (11) if the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parent(s), or in a different state, set forth the reasons why such placement is in the best interest of the child;
- (12) if the child has been placed in foster care in a state outside the state in which the child's parent(s) are located, assure that an authorized caseworker of either state visits the foster home or institution no less frequently than every twelve (12) months and submits a report on the visit to the Yurok Social Services;
- (13) assure that at the permanency hearing a determination is made as to whether an out-of-state placement continues to be appropriate and in the best interest of the child;
- (14) to the extent available and accessible, incorporate the health and education records of the child, including:
 - a. the names and addresses of the child's health and educational providers;
 - b. the child's grade level performance;

- c. the child's school record;
- d. assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;
- e. a record of the child's immunizations;
- f. the child's known medical problems;
- g. the child's medications; and
- h. any other relevant health and education information concerning the child determined to be appropriate by the Karuk Tribe Child and Family Services; and provide that a child's health and education record (as described above) is reviewed and updated, and supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster

SECTION 3: 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 Determination 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 the Yurok Social Services as the Tribal Court may order, if:
 - a. Consent is given by the child and his or her parent, guardian, 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 months, after which the petition shall either be dismissed or sustained.

SECTION 4: 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 a status review hearing for children placed in foster care or another out of home arrangement be made less frequently than once every six (6) months from the date the child is considered to have entered foster care.

B. Purpose and Findings

- (1) A child shall be returned home at the Status Review Hearing unless the Tribal Court find that a reason for removal as set forth above in this Children's Code still exists. The Court may, however, due to unresolved problems in the home, continue court intervention, services and supervision as appropriate.
- (2) If appropriate, the Court may refer the matter to the Tribe's Peacemaker Mediation Forum or for Family Unity Conferencing.
- (3) The purpose of the Status Review Hearing is for the Tribal Court to:
 - a. review the placement and plan for assuring that the child receives safe and proper care;
 - b. determine the continuing need for and appropriateness of the placement;
 - c. determine the extent of compliance with the case plan;
 - d. determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement;
 - e. project a likely date by which the child may be returned and safely maintained at home or placed for adoption or placed in another permanent living arrangement;
 - f. if the child is placed out of state, determine whether the out-of-state placement continues to be appropriate and in the best interest of the child; and
 - g. in the case of a child who has attained age sixteen (16), determine the services needed to assist the child to make the transition from foster care to independent living.
- (4) The Tribal Court, at any Status Review Hearing, held no sooner than twelve (12) months and no later than eighteen (18) months from issuance of the Placement and Services orders, must order a permanent plan, which may include an order that a petition for guardianship, or, only in extreme circumstances, a petition for modification of the parent/child relationship be filed.

CHAPTER 8: TERMINATION OF PARENTAL RIGHTS

SECTION 1: Termination of Parental Rights

(a) PROCEDURE FOR FILING A PETITION TO TERMINATE PARENTAL RIGHTS:

The Tribal Prosecutor is not required to file a Petition to Terminate Parental Rights if the Court has entered written findings that:

The Tribal Department of Social Services has not provided to the family of the child, consistent with the time period in the case plan, such services as the Department deems necessary for the safe return of the child to parental care.

The Tribal Prosecutor is required to file a Petition to Terminate Parental Rights if;

The Tribal Social Services department has made written recommendations of services for the family and, those services have been provided and, the Court issues a finding that the Tribal Social Services Department has made reasonable efforts to prevent removal of the child from parental care, and if removal could not have been prevented, and the Department has made reasonable efforts to alleviate and eliminate the need for removal of the child from parental care, the Court, in support of its determination of whether or not reasonable efforts have been made by the Department, shall enter a description of what preventive and reunification efforts were made and why further efforts could or could not have prevented or shortened the separation of the family;

Any filing of any such petition shall be consistent with the Protective Parent and Adoption Sections above.

SECTION 2: Mandated Petitions to Terminate Parental Rights

(a) The Tribal Prosecutor or other designated official) shall either file a petition to terminate parental rights of the child's parent(s) or the Tribal Social Services Department must document in the case plan that an exception from doing so is present where:

(1) A child has been in foster care under the responsibility of the Tribe for 15 of the most recent 22 months;

(2) A court of competent jurisdiction has determined a child to be an abandoned infant; or

(3) A court of competent jurisdiction has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted,

conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent.

(b) Where subsection (a) applies, the Tribal Prosecutor, 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 Protective Parent and Adoption Sections above unless:

(1) The child is being cared for by a relative;

(2) The Tribal Social Services Department 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; or

(3) 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 reasonable efforts are required to be made with respect to the child.

In any case, no adoption of a Yurok child shall occur in this court unless and until the birth parent(s) of said child have consented to said adoption. If said birth parents are not available to consent by reason of their death or incompetence or a reasonable and diligent search does not result in the location of such parent the court may consider a request for termination of parental rights and adoption accompanied by an affidavit or testimony that the surviving/remaining family of the parent(s) support the termination of parental rights and adoption of the minor child by the applicant.

A protective parent(s) shall be named when this court has terminated the parental rights and responsibilities of a parent or guardian. The protective parent shall permanently have all the rights and responsibilities of the former parents. The former parents however shall maintain their identity as parents and the relationship of the child shall be maintained with the extended family of the identity parents. Specifically include are all rights of enrollment and inheritance from the identity parent and family.

A protective parent may be appointed with or with out the consent of the identity parent.

SECTION 3: Court Findings Where Termination of Parental Rights Not Sought

(a) In all cases in which the Court does not direct the filing of a petition to terminate parental rights, the court shall specify compelling reasons why

termination of parental rights should not be sought, and would not be in the best interests of the child. Such findings must be supported by the Tribal Social Service Department case plan and record.

(1) Compelling reasons defined: in determining whether compelling reasons exist for not terminating parental rights, the court shall consider, but not be limited to the following:

- (i) Tribal Custom and tradition,
- (ii) Tribal Policy, whether oral or written, whether by custom, ordinance, or resolution, disfavoring or prohibiting termination of parental rights;
- (iii) The relationship between the parent and the child;
- (iv) The relationship between the child and the Tribe
- (v) The best interests of the child
- (vi) The special needs of the child;
- (vii) The Tribe's interest in maintaining the parent-child status, and the child's contact with the Tribe, and;
- (viii) Any other relevant considerations.

TRANSFER FROM OTHER JURISDICTIONS AND TRANSFER UNDER INDIAN CHILD WELFARE ACT 25 U.S. C. 19 et seq.

SECTION 1: 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 Code.

(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.

SECTION 2: Certification of Cases Transferred Under Indian Child Welfare Act

- (a) 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.

CHAPTER 9: CASA

SECTION 1. CASA Appointments

A. Court Appointed Special Advocates (CASA) Appointments

At any stage of the proceedings conducted under this Code, the Tribal Court may appoint a Tribal Court Appointed Special Advocate (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.

B. CASA Qualifications and Duties

- (1) 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 wardship proceedings
- (2) 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.
- (3) 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.
 - (4) 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.
- (5) 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

- (6) Each CASA shall be sworn in by a court judge, associate, or commissioner before beginning his or her duties.

CHAPTER 10: ALTERNATIVE PERMANENCY PLAN

The Department of Tribal Social Services may develop and implement an alternative permanency plan for the child while simultaneously making reasonable efforts to unite or reunite the child with his parent, guardian, or custodian. Such an alternative plan will include a family conferencing plan.

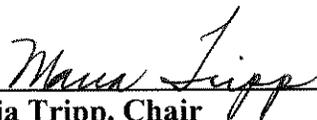
SECTION 1: Family Conferencing Plan

In all actions in which a substantiated report of child maltreatment is confirmed, the Court shall order Social Services to implement a Family Conferencing Plan as part of the services offered to the family.

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

THE FOREGOING ORDINANCE, ENTITLED THE YUROK TRIBE CHILDREN'S CODE, WAS ADOPTED AT A REGULARLY SCHEDULED MEETING OF THE YUROK TRIBAL COUNCIL ON JANUARY 31, 2008 AT WHICH A QUORUM WAS PRESENT AND THAT THIS ORDINANCE WAS APPROVED BY A VOTE OF 5 FOR, 0 OPPOSED, WITH NO ABSTENTIONS.

DATED THIS 31st DAY OF JANUARY, 2008.



Maria Tripp, Chair
Yurok Tribal Council

Attest:



for Cynthia McKernan
Executive Assistant