

# **THE KICKAPOO TRADITIONAL TRIBE OF TEXAS INDIAN CHILD WELFARE CODE**

## **CHAPTER 20**

### **Section 20.1 Indian Child Welfare Code**

#### **20.1 (a) POLICY:**

(1) Authority and Purpose: The purpose of this code is to assure the future of the Kickapoo Traditional Tribe of Texas ("KTTT") by establishing procedures to protect the best interests of Kickapoo children and of the Tribe and its customs and culture, as of the Kickapoo Traditional Tribe of Texas.

(2) Policy: It shall be the policy of the Kickapoo Traditional Tribe of Texas with regard to child welfare to:

(A) Protect the best interests of KTTT children, to prevent the unwarranted breakup of KTTT families, to maintain the connection of KTTT children to their families and Tribe, and to promote the stability and security of the Tribe by establishing tribal standards for the conduct of child custody proceedings involving KTTT children;

(B) Foster cooperative intergovernmental relations between KTTT and the State of Texas, and other States and Tribes, with regard to the welfare of KTTT children and families;

(C) Provide child welfare services to KTTT children and families that are in accord with the traditions, laws and cultural values of the Tribe; and

(D) Preserve the opportunity for KTTT children to learn about their culture and heritage, and to become productive adult members of the KTTT tribal community, by experiencing their culture on a permanent basis.

(E) Utilize, as applicable, the Tribe's Family Unity Model approach in its efforts to reunify families.

**20.1 (b) DEFINITIONS:** Terms under this code are to be interpreted in a broad fashion designed to encourage the jurisdiction of the Tribal Court over children who come under this code, and to facilitate the authority of the Tribal Court to act to protect the interests of KTTT children and families.

The terms in this subsection shall be interpreted in light of tribal laws, customs, and traditional child-rearing practices. Terms not specifically defined in this Code shall be defined according to their normal usage, or as defined in the Federal Indian Child Welfare Act, as appropriate.

As used in this code, the terms listed below shall have the following meaning:

- (1) "Abandonment": The failure of the parent, guardian or custodian to provide reasonable support and to maintain periodic contact with a child. Failure to maintain a normal parental relationship with the child without just cause for a period of six (6) months shall constitute prima facie evidence of abandonment. Custody with extended family members or voluntary consent to placement does not constitute abandonment.
- (2) "Abuse": The infliction of physical, emotional or mental injury on a child, or sexual abuse or sexual exploitation of a child, including failing to maintain reasonable care and treatment or exploiting or overworking a child to such an extent that his health, moods or emotional well-being is endangered.
- (3) "Administrative Review": A case review system to review the case plan and the placement of each child receiving foster care by a panel of no less than three (3) appropriate persons.
- (4) "Adult": A person eighteen (18) years of age or older or a person emancipated by order of a court of competent jurisdiction.
- (5) "Best Interests of the Child": means the preservation of the connection, or the creation of such a connection if one does not currently exist, between a KTTT child and his or her culture, family and Tribe in a setting that is stable, secure, safe, healthy and emotionally, spiritually, socially, and intellectually enriching, and in which the special needs of that child may be met.
- (6) "Case Plan": A written document for each child under the jurisdiction of the Court which shall include a detailed service plan designed to reunite the family, and be designed to achieve placement in the least restrictive (most family-like) setting available and in close proximity to the Parent's home consistent with the best interests and special needs of the child. In the event reunification is determined not to be in the best interest of the child, the family and/or the Tribe, the service plan shall be designed to achieve other appropriate permanent

placement goals that are in the best interest of the child, the family and/or the Tribe, provided that such goals are not inconsistent with other provisions of this Code. The case plan shall include at a minimum a detailed list of the services to be provided to the child and family, which will provide those services, the time frame in which the services will be provided, what standard will be considered compliance with the services, and the respective responsibilities of the Tribal Family Action Program ("TFAP") and the family and the child in making the services available, and in taking advantage of such services. The Tribal Court shall review this case plan and its implementation by TFAP in order to determine whether or not "reasonable efforts" are being made to prevent or eliminate the need for removal of the child from the home, or to make possible the child's return to his or her home. The Court shall include such findings in its Order upon review or disposition.

(7) "Case Review System": A procedure to review the status of each child in foster care no less than once every six (6) months, beginning from the date of placement, by the Tribal Court and TFAP or Administrative Review Panel, if appropriate.

(8) "Child": A person who is less than eighteen (18) years old who has not been emancipated by order of a court of competent jurisdiction.

(9) "Contempt of Court": Any willful disobedience or interference with any order of the Court is contempt of Court.

(10) "Custodian": A person other than a parent or guardian, who has custody of a minor and who is providing, food, shelter and supervision to him or her.

(11) "Delinquent Act": An act of a minor a) that violates any tribal, juvenile, state, or federal code or statute and would be classified a crime if committed by an adult; b) wherein without just cause the minor runs away from his/her parental home or other properly authorized and lawful domicile for longer than 24 hours; c) that, coupled with other such acts constitutes continual and habitual disobedience of the reasonable and lawful demands of his/her parent (s), guardian or custodian, so as to be beyond parental control; d) of indecent or immoral conduct; e) wherein he/she has been habitually truant, or while in school, has been continuously and overly defiant of school rules or regulations; or f) which violates any lawful Court order.

(12) "Domicile": A person's permanent home, legal home or main residence. The domicile of a child is generally that of the custodial parent or guardian. Domicile includes the intent to establish a permanent home or where the parent or guardian consider to be their permanent home.

(13) "Extended Family": A person who is an enrolled tribal member or eligible for enrollment and who has reached the age of eighteen (18) and 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, step-parent, godparent or traditionally appointed custodian.

(14) "Foster Care": A social service which provides substitute family care for a child for a planned period of time when the child's own family cannot care for him or her. The goal of foster care or any placement is a permanent family for the child. It includes all out-of-home-care when it is officially sanctioned by the Tribal Social Services Department. Out-of-home care covers both voluntary and involuntary placements, short or long-term, temporary or emergency placement with a family, group home or institution.

(15) "Child": Any child of KTTT descent within the service area, and all children who are members of the KTTT Tribe or eligible for membership in the Tribe wherever they are found.

(16) "Guardian": A person other than the minor's parent who is by law responsible for the care and custody of that minor or his or her estate, or both.

(17) "Guardian ad-litem": An adult appointed by the court to represent a child in any suit to which he or she may be a party, for the protection of the child's best interests.

(18) "Incompetent": An insane person or person who is for any cause mentally or physically incapable of caring for herself/himself.

(19) "Indian": Any member of a federally recognized Indian tribe, band or community, or an Alaska Native who is a member of a regional corporation as defined in 43 U.S.C. § 1606, or a person considered by the Tribe to be Indian.

(20) "Juvenile Offender": A child who commits a "delinquent act" prior to the child's eighteenth birthday, or a child with a current Court Order, from any recognized Tribal, Juvenile, State or Federal Court, finding him/her a Juvenile Offender.

(21) "Minor": An unmarried person under eighteen (18) years of age; a person eighteen (18) years or age or older concerning whom proceedings are commenced

in Tribal Court prior to his or her eighteenth birthday; a person eighteen (18) years of age or older under the continuing jurisdiction of the tribal court.

(22) "Neglect": The failure of the parent, guardian or custodian to provide adequate food, clothing, shelter, medical care, education or supervision for the child's health and well-being, including the failure of such parent or other custodian to take advantage of reasonably available public assistance and service programs designed to furnish such needs where the parent or custodian cannot provide such needs on their own. "Neglect" shall include "abandonment" of children as defined here.

(23) "Parent": Includes natural or adoptive parents but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.

(24) "Presenting Officer": A representative for the Tribe (or the Tribal Family Action Program) who will assist in the development of Indian Child Welfare matters, file petitions with the court as provided in this code and appear in all proceedings under this code; and

(25) "Shelter Care": A home or other living facility used as a temporary living place for a minor pending the return of the minor to his or her family, or his or her placement in a residential facility designed for long-term placement which does not physically restrict the minor.

(26) "Youth in Need of Care": A child who has been found to be abandoned, abused, neglected or a juvenile offender.

**20.1 (c) JURISDICTION OF THE TRIBAL COURT:** Unless otherwise defined, the jurisdiction of the Tribe over child welfare matters shall extend to all children who are within the jurisdiction of the Court under this code and who reside or are domiciled within the service area of the Tribe as that term is defined by federal and tribal law. The Tribal Court shall also have jurisdiction over any KTTT child who resides beyond the service area of the Tribe. It is understood that the jurisdiction of the KTTT Tribe over children under this code is in some cases concurrent with the jurisdiction of other sovereigns.

The Tribe shall have jurisdiction over all KTTT children, whether within or without the Tribe's reservation or service area. The Tribe shall have jurisdiction over children of KTTT tribal members or of their spouses, and over children by the consent of the parties with custody of such children. The Tribe shall have jurisdiction over other Indian children who reside on tribal trust land.

**20.1 (d) DUTY TO INVESTIGATE AND REPORT ABUSE AND NEGLECT:**

(1) Basis of Investigation and Report Persons who have a reasonable cause to suspect that a minor has been abused or neglected shall report the suspected abuse or neglect to a tribal agency responsible for investigating allegations of abuse or neglect. TFAP, or a tribal law enforcement agency after one is established, shall immediately investigate all allegations of abuse, abandonment and neglect, and if appropriate, proceed according to the provisions of this code.

(2) Persons Required to Report. Those persons required to report suspected abuse or neglect include any physician, nurse, dentist, optometrist or any medical or mental health professional; school principal, school teacher, or other school official; social worker; child day care center worker or other child care staff including foster parents, residential care or institutional personnel; counselor; peace officer or other law enforcement official; judge, attorney, court counselor, clerk of the Court or other judicial system official.

(3) Other Persons Reporting. Any person may make a report of suspected abuse or neglect to the proper tribal officials.

(4) Anonymity. Those persons reporting, except those specified in Section 20.1(d) may remain anonymous if the court so determines.

(6) Immunity from Liability. All persons or agencies reporting in good faith, known or suspected instances of abuse or neglect, are immune from civil liability and criminal prosecution.

**20.1(e) RECORDS MAINTENANCE AND PROTECTION; CONFIDENTIALITY:**

(1) Court Records. A record of all hearings under this code shall be made and preserved until the jurisdiction of the court has ended.

(2) Confidentiality. All court records are confidential and shall not be open to inspection other than by court personnel or by any person except for the following:

(A) The minor and his or her attorneys;

(B) The minor's parent, guardian or custodian and his or her attorney;

(C) The tribal caseworker and the tribal attorney;

(D) The presenting officer; or

(E) Any other person the court determines has a valid reason to see such records and who is issued a written order detailing the reasons for permitting such person to review such records.

All court files, documents, or other material associated with a child custody proceeding governed by this Code shall be kept confidential, unless ordered released by order of the court. This confidentiality provision applies to all divisions and departments of the Tribe, including social service and law enforcement agencies. This section applies to the release of the names of children, families or witnesses involved in proceedings under this Code. Disclosure of documents and material to authorized public agencies, whether tribal, federal or state, in the performance of the official duties of those agencies shall not violate this section.

All records included within this section shall be kept in a secure place by the Court Clerk, and shall be released only pursuant to procedures developed by the Judge presiding of the Court. No other release of information shall be permitted without an order of the court.

(3) Oath Each person who inspects a minor's record shall be required to sign a written oath pledging to maintain the confidentiality of the records. Failure to abide by this pledge shall constitute contempt of court.

(4) Destruction of Records. All records of the minor shall be destroyed when the minor is no longer subject to the courts jurisdiction, except those records involving adoption, neglect, abandonment, or abuse of a minor shall not be destroyed and shall remain sealed until further order of the court.

20.1 (f) MEDICAL EXAMINATIONS: The Court may order a medical and/or psychological examination for a minor or any other party before the Court if it is determined after a hearing that the party's medical or psychological health are relevant to the issues before the Court and such examination shall be paid for by the parents if they can afford it, and if not, paid for by the Tribe pursuant to Tribal policy.

20.1 (g) PAYMENT OF FEES AND EXPENSES: There shall be no fee for filing a petition under this Code nor shall any fee be charged by any tribal officer for the service of process or for attendance in Court in any such proceedings. Witness fees shall be payable in accordance with the rules of this Court. Such fees and expenses, cost of publication of summons, and the expense of a trial of an adult person, when approved by the Court, shall be paid by either the parent, guardian or custodian of the minor before the Court, or by the Tribe.

20.1 (h) RESPONSIBILITIES OF ADULTS:

(1) Parental Responsibility.

(A) Parent as Party. The parent of a child within the jurisdiction of the tribal court may be made a party to a petition if the child is alleged to be a youth-in-need-of-care, or a juvenile offender.

(B) Dispositions The Court may order the parent under this section to submit to counseling, comply with their Service Plan, participate in any probation or other treatment program ordered by the Court and, if the child is committed for institutionalization, to participate in any institutional treatment or counseling program including attendance at the site of the institution.

(C) Fines. A parent shall be jointly liable with the child for any fine his child may be ordered to pay. Said liability will survive the child's attaining majority.

(D) Cost of Support. The Court shall order the parent, guardian or custodian to pay the reasonable cost or part of the cost of court proceedings, and support and treatment of the child that the parent is financially able to pay if:

1. The child is adjudicated to be a youth-in- need-of care, or a juvenile offender; and
2. The Court orders that child be placed with an agency, institution or an individual other than the parent.

(2) Other Adults: The Court shall join as a party in any proceeding under this Code any adult necessary for proper disposition of any case heard pursuant to this Code.

(3) Enforcement: The Court may enforce any of its orders issued under this section by use of its contempt power.

#### 20.1 (i) COMMENCEMENT OF ACTION:

(1) Petition or Emergency Petition Except as otherwise provided below, proceedings in cases under this Code are begun by Petition or by stipulation of the parties in the form of a Co-Petition and Affidavit.

(2) Exceptions to Petition In the case of violations of motor vehicle or boating laws and codes, or fish and game laws and codes a petition shall not be required. The issuance of a traffic or other citation or summons for these violations is sufficient to invoke the jurisdiction of the Tribal Court. Unless the Court orders otherwise, a preliminary investigation is not required in such cases.



(3) Contents of Petition. A petition shall be entitled "In the Matter of \_\_\_\_\_, A Minor," and shall set forth:

- (A) The name, birth date and residence of the minor;
- (B) The names and residences of the minor's parent, guardian or custodian;
- (C) A citation to the specific section of this Code, which gives the Court jurisdiction of the proceedings;
- (D) Where applicable, a citation to the section of this or other Codes which the minor is alleged to have violated;
- (E) If the minor is in detention or shelter care, the place of detention or shelter care and the time he was taken into custody; and
- (F) A concise statement of the facts underlying the petition.

(4) Preparation of Petition. The statements in the petition may be made upon information and belief and the petition shall be prepared, verified and signed by the presenting officer or tribal caseworker.

(5) Dismissal. The Court may dismiss a petition at any stage of the proceedings with good cause stated.

20.1 (j) STANDARD OF PROOF: The standard of proof for a juvenile offender's adjudicatory hearing, or termination of parental rights, shall be proof beyond a reasonable doubt. For an adjudicatory hearing to determine if a minor is a youth in need of care the standard of proof shall be clear and convincing evidence. For all other hearings the standard of proof shall be a preponderance of the evidence.

20.1 (k) USE OF REPORTS IN JUVENILE PROCEEDINGS: For the purpose of establishing that a child is a youth in-need-of-care, and for the purpose of determining proper disposition of a minor in any case, written reports and other materials relating to the child's mental, physical and social history and condition, may be received in evidence, and may be considered by the Court along with other evidence, but the Court may require that the person who wrote the report or prepared the material appear as a witness if he or she is reasonably available. Only evidence which is independently admissible and which is contained in any of these reports or documents shall be considered by the Court.

20.1 (l) CONSOLIDATION: When more than one child is involved in the same situation which may be found to constitute abuse or neglect, or when more than one child is alleged to be involved in the same law violation, the proceedings may be consolidated, except that separate hearings maybe held with respect to disposition.

20.1 (m) PRESENCE OF PARENT, GUARDIAN, CUSTODIAN OR GUARDIAN AD LITEM: The Court shall endeavor to insure the presence at all hearings of one or both parents or guardian or custodian of the minor. If no one is present, the Court may appoint a guardian ad litem to protect the interests of the child.

20.1 (n) GROUNDS FOR RE-HEARING: A parent, guardian or custodian of any child whose status has been adjudged in a proceeding under this Code, or any adult affected by an order or judgment in a proceeding under this Code, may within one year petition the Court for a new hearing on the grounds that new evidence which was not known or could not with due diligence have been made available at the original hearing and which might affect the order or judgment, has been discovered. If it appears to the Court that there is such new evidence which might affect its order or judgment, it shall order a new hearing and enter such order or judgment and make such disposition of the case as is warranted by all the facts and circumstances and the best interest of the child.

20.1 (o) MODIFICATION, REVOCATION OR EXTENSION OF AN ORDER:

(1) Upon Motion The Court with cause may modify, revoke or extend an order at any time upon the motion of the following:

- (A) the minor and his attorney;
- (B) the minor's parent, guardian or custodian, and his or her legal representative if appropriate;
- (C) the Tribal caseworker; or
- (D) the presenting officer.

(2) Hearing. A hearing to modify, revoke or extend a court order shall be conducted according to the rules of the Court.

20.1 (p) GUARDIAN AD LITEM: The Court, at any stage of a proceeding, shall appoint a guardian ad litem for a minor who is a party, if the minor has no parent, guardian or custodian appearing on behalf of the minor or if the interest of the minor conflicts with the interest of parents, guardians or custodians or when it appears to the Court that the child's best interests warrant.

20.1 (q) TESTIMONY BY VIDEOTAPE: At the discretion of the Court, and where necessary to protect the best interests of the child, the Court may permit minors to testify by videotape, or take other steps necessary to protect the child in proceedings under this code.

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## **Section 20.2 Youth in need of care/emergency custody provisions**

### **20.2 (a) POLICY:**

It is the policy of the KTTT Tribe to ensure an adequate physical and emotional environment that will protect the health, safety, and development of all KTTT children; to compel the parent or custodian of a KTTT child to provide a proper environment for their children; to facilitate changes or improvement in the home environment where necessary to provide a proper environment for the child; to establish a judicial process to protect the health and safety of KTTT children including the provision of substitute care and supervision for children in need of care; and to protect a child's identity and ties with his or her family and the tribal community.

### **20.2 (b) INVESTIGATIONS AND REPORTS:**

(1) Required investigations. The caseworker shall initiate all investigations of matters that arise under this Code, when an allegation of abuse, dependency or neglect is made. The court may require that a report be submitted to the Court in writing in all cases under this Code in which a petition has been filed, except violations of traffic, fish, and game and boating laws, and codes. Investigations for juvenile offenders may be submitted to the Court for dispositional purposes only, except in unusual circumstances, and shall not be submitted, except in said circumstances, until after adjudication is completed and the Court has found that the minor has committed the alleged acts.

(2) Scope of Investigation. The investigation shall cover the child's home environment, history and associations, the present condition of the child and family, and recommendations as to the child's future care. The worker shall make conclusions as to the likely future of the family if no intervention occurs. In cases involving the duty of support, the study shall include such matters as earnings, assets, financial obligations and employment.

### **20.2 (c) TAKING A MINOR INTO EMERGENCY CUSTODY:**

(1) A tribal representative shall be designated to handle emergency custody of minors under this Code. The representative shall be a law enforcement officer or the TFAP Caseworker. In the absence of a law enforcement officer or a TFAP Caseworker, the tribal representative shall be some other person designated by the Executive Officer.

The tribal representative shall take a minor into custody if:

- (A) He or she has reasonable grounds to believe that the minor is a youth-in-need-of-care and is in immediate danger from his or her surroundings and that removal is necessary; or
- (B) An emergency custody order has been issued by the Tribal Court for the youth; or
- (C) He or she has reasonable cause to believe that a youth subject to the Tribal Court's jurisdiction is leaving the jurisdiction of the Court or being taken from this jurisdiction without permission.

20.2 (d) RELEASE OF MINOR FROM CUSTODY:

(1) The tribal representative who takes a minor into custody shall:

- (A) Release the minor, immediately, to the minor's parent, guardian or custodian and issue verbal instructions or warnings as may be appropriate; or
- (B) If the tribal representative is not a tribal caseworker, deliver the minor immediately to the caseworker or to shelter care designated by the Tribal Court, or to a medical facility if the minor is believed to be in need of medical attention. If the minor is not delivered to a caseworker, the tribal representative shall notify the caseworker as soon as possible of the circumstances of the custody and the location of the minor.

(2) The tribal caseworker, immediately upon arranging for custody of the minor or upon placement of the minor, shall review the need for custody and shall:

- (A) Notify the parent, guardian or custodian within twenty-four hours of learning that custody of the child has been taken; or
- (B) If appropriate, release the minor to his parent, guardian or custodian unless the child requires shelter care.
- (C) A minor taken into custody under this section shall be released to his parent, guardian or custodian within five (5) business days of the time he or she was taken into custody unless the Court issues an order continuing custody to the child with the Tribe. In the event of a dispute regarding a minor's release from custody during the first five (5) business days of custody, the child welfare caseworker and the ICW Coordinator shall have complete authority, in the absence of a Court order, to determine if the minor is to remain in custody.

**20.2 (e) NECESSITY FOR EMERGENCY CUSTODY:** A child shall be placed in emergency custody if the court finds probable cause to believe that the minor is a youth-in-need-of-care and one or more of the following conditions exists:

- (1) The minor is suffering from an illness or injury, and no parent, guardian, custodian or other person is providing adequate care of him or her;
- (2) The minor is in immediate danger from his or 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;
- (3) The minor will be subject to injury or abuse by others or by him or herself if not placed in custody by the Court;
- (4) The minor has been abandoned by his or her parent, guardian, custodian or other person;
- (5) No parent, guardian, custodian or other person is able or willing to provide adequate supervision and care for the minor;
- (6) The minor will run away, or be taken beyond the jurisdiction of the Court, and will be unavailable for further proceedings; or (7) The minor is a juvenile offender.

**20.2 (f) EMERGENCY PLACEMENT:** A child in need of emergency placement may be placed, pending a court hearing, in one of the following placements:

- (1) With extended family members who will be able to protect the health and safety of the child;
- (2) A foster care facility in the service area licensed or approved by the TFAP;
- (3) A private family home in the service area licensed or approved as a foster home by the TFAP;
- (4) A shelter care facility in the service area approved by the TFAP; or
- (5) A shelter care facility outside the service area or an approved foster home outside the service area approved by the TFAP.

No child who is determined to be a youth-in-need-of-care shall be detained in a detention facility or in jail.

**20.2 (g) PETITION:**

- (1) The tribal ICW Coordinator in conjunction with the caseworker shall review and investigate all complaints, and shall file a petition, within 48 hours of taking

custody of the child or by the close of the first business day following, with the Court upon a preliminary determination that the child is a youth-in-need-of-care.

(2) The form of petition shall be a form authorized pursuant to the rules of the Tribal Court. The petition shall state:

(A) The specific sections of this code which give the Court jurisdiction;  
and

(B) The provision of this Code or relevant court order which is alleged to have been violated;

(C) The name, address, and age of the minor who is the subject of the petition; and

(D) All parties to the allegations; and

(E) The facts upon which the allegations are based, including the date, time, and location where the alleged facts occurred including any alleged witnesses; and If the child is in detention, shelter care or other custody, the time and date the child was placed in such care and the reasons therefore.

The presenting officer may assist in the preparation of any petition under this Code.

20.2 (h) CUSTODY ORDERS: Custodial orders shall be issued pursuant to the Rules of the Court.

20.2 (i) PRELIMINARY INQUIRY:

(1) Policy: The purpose of a preliminary inquiry is to determine the best interests of the minor and the Tribe with regard to any action to be taken with regard to a child once he or she is taken into emergency custody. In determining the child's best interests, the Court shall examine whether probable cause exists to believe the alleged acts of abuse or neglect were committed and whether continued custody is necessary pending further proceedings.

(2) Time. A preliminary inquiry involving a child shall be held within ten (10) days from the time a child is placed in emergency custody. If the child has been released from emergency custody, the preliminary inquiry shall be held within ten (10) business days from the date the child is released from emergency custody. If a child has not been placed in emergency custody, the preliminary inquiry shall be held within ten (10) business days of the filing of a petition, if it is not dismissed.

(3) Attendance of Parent, Guardian or Custodian. If the minor's parent, guardian or custodian is not present at the preliminary inquiry, the Court shall determine what efforts have been made to notify and to obtain their presence. If it appears

that further efforts are likely to produce their appearance in court, the Court shall recess for not more than twenty-four (24) hours and shall direct the presenting officer or the TFAP Caseworker to make continued efforts to obtain their presence.

(4) Dismissal of Petition and Release of Minor. If the Court determines that there is no probable cause to believe that the minor is a youth-in-need-of-care, the Petition shall be dismissed without prejudice and the minor released. If the Court determines that there is probable cause to believe that the minor is a youth-in-need-of-care but that the minor is not in need of emergency custody, the minor shall remain in the custody of the TFAP or be released to the custody of his or her parent, guardian or custodian pending final disposition of the petition, under the protective supervision of the Tribe.

20.2 (j) INVESTIGATION AND RECOMMENDATIONS BY THE CASEWORKER:

(1) Investigation The caseworker shall further investigate the allegations in the Petition after the preliminary inquiry or release of the minor to determine whether the interests of the minor and the Tribe require that further action be taken.

(2) Recommendation. Upon completion of the investigation, the child welfare caseworker shall recommend to the presenting officer:

- (A) No further action be taken;
- (B) Holding an informal adjustment conference; or
- (C) Continued investigation and monitoring of the case until the Adjudicatory Hearing.

20.2 (k) INFORMAL ADJUSTMENT CONFERENCE:

(1) Informal Conference. After the preliminary inquiry, the caseworker may hold an informal conference with the minor and the minor's parent, guardian, custodian or legal representative to discuss alternatives to the Adjudicatory Hearing:

- (A) The admitted facts bring the case within the jurisdiction of the Court and allow for admission or denial of the Petition by the Parties;
- (B) An informal adjustment of the matter would be in the best interests of the minor and the Tribe; and
- (C) The minor and his or her parent, guardian, custodian or legal representative consent to an informal adjustment with knowledge that the consent is voluntary.

(2) Alternatives. As a result of the informal adjustment conference, the caseworker may:

- (A) Refer the minor and the parent, guardian or custodian to a community agency for needed assistance;
- (B) Order terms of supervision, calculated to assist and benefit the minor, parents, guardian or custodian which regulate the activities of the minor and his or her parents, guardian or custodian and which are within their ability to perform;
- (C) Accept an offer of restitution if voluntarily made by the minor and appropriate; or
- (D) Recommend that the presenting officer file a petition pursuant to this Code if it appears that no other alternative will be in the best interests of the minor and of the Tribe.

(3) Written Agreement:

- (A) Content The caseworker shall set out in writing the agreement and conclusions reached at the informal adjustment conference. The parties shall sign the agreement and be provided with a copy. An informal adjustment agreement shall not exceed six (6) months in length, except that the time period may be extended upon order of the Court.
- (B) Review period. The caseworker shall review the family progress every thirty (30) days. If, at any time after the initial thirty (30) day period but before the end of the six (6) months, the caseworker concludes that the agreement as it is being followed is not serving the best interests of the child, the caseworker shall recommend that the presenting officer file a petition pursuant to this Code.
- (C) Acceptance by Presenting Officer The informal adjustment agreement shall be reviewed by the presenting officer after it is signed by the parties. The presenting officer shall accept or reject the agreement within five (5) days. If the agreement is rejected, the presenting officer shall make written comments indicating what conditions are necessary for the agreement to be accepted. The parties shall be informed at the start of any informal adjustment negotiation by the caseworker that the presenting officer has the authority to review and approve any agreement which is reached.



(D) Notice to the Court The presenting officer shall file a copy of the approved informal adjustment agreement with the Court.

(E) Disposition Upon Completion of Agreement. If the informal adjustment agreement is followed and the caseworker, in conjunction with the Tribal Attorney's Office does not recommend the extension of the agreement during the informal adjustment period, the presenting officer shall dismiss the petition at the end of the agreement.

(4) Use of Statements Made. No statements made during the informal adjustment conference, whether written, oral or demonstrative, may be used against the minor or any of the parties or witnesses if a petition is filed.

#### **20.2 (I) ADJUDICATORY PROCESS:**

(1) Petition The petition can be amended pursuant to the Rules of the Court; or

(2) Notice of a hearing on the petition, or on any matter related to the petition or the minor, shall be given to the parties as required by the Rules of the Court.

(3) Summons on the petition shall be issued and served as required by the Rules of the Court.

(4) Hearing an adjudicatory hearing shall be held within thirty (30) days after the Preliminary Inquiry, except upon order of the Court. The Court shall conduct the hearing for the purpose of determining if a minor is a youth-in-need-of-care. A finding by the Court that a minor is a youth-in-need-of-care shall be considered to be a final order for purposes of appeal. If the Court finds that the minor is a youth-in-need-of-care, the Court shall dispose of the child in a manner consistent with the child's best interests and which is the least restrictive setting for the child, pursuant to Section 7.12(d) of this Code.

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#### **Section 20.3 Dispositional and Placement Provisions**

##### **20.3 (a) POLICY: REQUIREMENTS FOR REMOVAL OF CHILD FROM CUSTODY:**

After a Petition is filed for custody of a child pursuant to this Code, the removal of a child from his or her home for foster care placement, termination of parental rights or long-term placement must result from a judicial determination that continued custody would be contrary to the health and welfare of such child. Reasonable efforts shall be made before foster care placement, termination of parental rights and long-term placement to prevent or eliminate the need to remove the child from his or her home, and reasonable efforts are to be made to make possible the child's return to his or her home provided, however, that nothing in this section shall prevent the emergency removal of a

child as allowed by this Code. Where more than one child is removed from a home, it shall be the Tribe's policy to keep all the children so removed in one placement or shelter.

**20.3 (b) PRE-DISPOSITIONAL REPORT:**

(1) Preparation The caseworker shall prepare a report to the Court for the disposition of a child who is a juvenile offender or a youth-in-need-of-care if the Court determines a report is necessary. The pre-dispositional report shall be filed at least five (5) days before the dispositional hearing, except by order of the Court. The report shall contain a specific plan for the care and assistance to the minor or his or her parents, guardian or custodian which is calculated to resolve the problems presented in the petition which are the least restrictive to the minor and consistent with the Tribe's and child's best interests.

(2) Additional Reports Copies of the pre-dispositional reports shall be made available to the minor, the parents, guardian, custodian or legal representative at least two (2) days before a dispositional hearing. Any party may submit a separate pre-dispositional report to the Court in the same time period set out in this subsection.

**20.3 (c) DISPOSITIONAL HEARING:**

(1) Time Limits The dispositional hearing shall be held within twenty (20) days of the adjudicatory hearing for the purpose of determining the proper disposition of the minor, except upon order of the Court.

(2) Exceptions Upon request of any of the parties or of the presenting officer, or if the Court determines that this would be in the best interests of the child, the Court may hold a dispositional hearing immediately after the adjudicatory hearing on the petition. This petition shall only be used in extraordinary circumstances.

**20.3 (d) DISPOSITION OF A YOUTH-IN-NEED-OF-CARE:** Upon making a finding that a minor is a youth-in-need-of-care, the Court may make any of the following dispositions, listed in order of priority.

(1) Permit the minor to remain with his or her parents, guardian or custodian under protective supervision subject to such limitations and conditions as the Court may prescribe;

(2) Place the minor with an extended family member under protective supervision within the boundaries of the service area subject to such limitations and conditions as the Court may prescribe;

(3) Place the minor in a foster home under protective supervision within the service area which has been licensed or approved by the Tribal social services department, subject to such limitations and conditions as the Court may prescribe;

(4) Place the minor in a residential facility under protective supervision as designated by the Court.

(5) Place the minor in a foster home or an extended family member's home approved by the TFAP outside the service area, subject to such limitations and conditions as the Court may prescribe;

(6) Transfer legal custody to an agency responsible for the care of youth-in-need-of-care children, or to an extended family member or other person who the court finds to be qualified to receive and care for the child, subject to such limitations and conditions as the Court may prescribe;

(7) Place the child in a long-term placement, including consideration of guardianship as an alternative to adoption or termination of parental rights.

(8) Order that TFAP consider initiating either full or partial emancipation be ordered; or

(9) Order that TFAP consider initiating termination proceedings;

20.3 (e) DISPOSITION OF JUVENILE OFFENDER: If a minor has been adjudged a juvenile offender or has been found to have committed a delinquent act pursuant to this Code, the Court may order any or all of the following dispositions.

(1) Any disposition that is authorized for the disposition of a youth-in-need-of-care;

(2) Place the minor on probation subject to conditions set by the Court;

(3) Place the minor in an institution or agency designated by the Court;

(4) Place the minor in a detention facility;

(5) Require the minor to make restitution; or

(6) In cases of violations of traffic laws or codes, the Court may, in addition to any other disposition, restrain the child from driving for such period of time as the Court deems necessary, and may take possession of the child's driver's license.

20.3 (f) CONDITIONS SET BY THE COURT: The conditions or limitations which the Court may set upon a child, his or her parent, guardian, custodian or any other party pursuant to this Code shall be designed to improve the condition of the child if he is found to be a youth-in-need-of-care or the behavior of the child if he is found to be a juvenile offender. Such conditions or limitations include but are not limited to: counseling or therapy; restriction on visits with one or both parents; payment of support or other necessary costs; attendance at school; participation in tribal-sponsored activities; restrictions on associations; curfew; or any other dispositions as set out in this code.

20.3(g) OUT OF SERVICE AREA AGREEMENTS: Whenever a minor is placed in a home or facility located outside the Tribe's service area, the Court shall require the party receiving Custody of the minor to sign an agreement that the minor will be returned to the Court upon Court Order, and submitting to tribal jurisdiction. Absent such a signed agreement, any person or institution shall be deemed to have consented to return such child to the Court by virtue of having taken placement under this Code, and to have consented to tribal jurisdiction for purposes of the child.

20.3(h) PERIODIC REVIEW OF PLACEMENT; PERIODIC REVIEW: Within six months of the original dispositional or adjudicatory hearing and each six (6) months thereafter so long as a child remains within the jurisdiction of the Court, the child is in short term or temporary care, or the child is in a placement not within the preferences of this Code, the status of a child will be reviewed by the Court to:

- (1) Determine the continuing need for appropriateness of Court jurisdiction and of the placement;
- (2) Determine the extent of compliance with the case plan;
- (3) Determine the extent of progress made toward easing or lessening the cause requiring the placement in foster care; and
- (4) Project a likely date by which the child may be returned home or placed for adoption or legal guardianship.

The Court at the periodic review may consider any recommendations on these issues by TFAP, expert testimony, or the Administrative Review Panel, if appropriate. An interested party may request a dispositional review at any time, and such review shall be granted at the discretion of the Court. A dispositional order is a final order for purposes of appeal.

20.3 (i) PERMANENCY PLANNING HEARING; DISPOSITION: Within 18 months of the original placement and every six (6) months thereafter, the Court shall hold a permanency planning hearing in accordance with this Code to determine the long-term status of the child.

Recommendations made by the TFAP shall be presented to the Court at this hearing and the Court shall decide if the recommendations shall be followed. The permanency planning hearing may be combined with the periodic review. The court may order, but is not limited to, any of the following dispositions:

- (1) Returning the child to the parent(s);
- (2) Ordering that a guardian be appointed and placing the child with the guardian;
- (3) Continuing the child in foster care for a specific period;
- (4) Continuing the child in foster care on a permanent or long-term basis; and

20.3 (j) PROCEDURES FOR PLACEMENT REVIEW HEARINGS: The court shall return a child to the physical custody of the parent or guardian unless by a preponderance of evidence it finds that returning the child would cause a substantial risk to the physical or emotional well-being of the child. The TFAP has the burden of proving the risk. The Court shall review TFAP and Administrative Review Panel reports, if appropriate, and consider any other evidence and testimony including the parent or guardian's treatment or efforts at rehabilitation. The Court also may order additional services, budget allowing, which will facilitate the return of the minor to the custody of his parent or guardian.

20.3 (k) PERIODIC REVIEWS AFTER PERMANENCY PLANNING HEARING: Periodic reviews conducted by the Court after the initial permanency planning hearing shall determine the appropriateness of the placement, the continued appropriateness and extent of compliance with the permanent plan for the child, the extent of compliance with the case plan, and adequacy of services provided to the child. By the end of the 18th month of foster care, a decision regarding the long-term placement of the minor shall be made, except by order of the Court.

20.3 (l) PERMANENCY PLANNING HEARING NOT REQUIRED: Subsequent permanency planning hearings need not be held if:

- (1) The child has been adopted;
- (2) The child is a ward of a guardian; or
- (3) The child is in long-term foster placement intended to be permanent in nature, provided the initial dispositional hearing required under this Code has been held, and provided further the Tribal Court explicitly orders that no further permanency planning hearings are required.

**20.3 (m) NOTICE OF CHANGE IN CHILD'S PLACEMENT:** The removal of the child from the parent's home, change of the child's placement or a determination affecting a parent, guardian, or custodian's legal right to custody of a child shall require notice of such change to the parties, and a review hearing shall be conducted on such change upon the written request of any party.

**20.3 (n) TFAP DUTIES FOR LONG-TERM PLACEMENT: REPORTS AND RECOMMENDATIONS:** TFAP shall have the duty to recommend long-term options for a minor within the jurisdiction within the Court. The caseworker shall submit a report at least Five (5) days prior to periodic review hearing conducted before the Tribal Court. This report shall discuss compliance with the placement preferences of the Tribe, the long term prospects of reuniting the child with his or her family, the placement options available to the child, and the caseworkers recommendations as to which placement would serve the best interests of the child.

**20.3 (o) CONFIDENTIALITY TFAP RECORDS:** All records of the TEAP regarding placement of a child within the jurisdiction of the Court under this code are confidential and shall be made available only to the Court or a party and a legal representative, and the minors parent, guardian, or custodian, or to other persons the court determines has a valid reason to seize such records.

**20.3 (p) CONTINUING JURISDICTION:** For dispositional purposes, jurisdiction over a child under this Code shall continue until he or she becomes 18 years of age, unless such jurisdiction is term innate prior thereto by order of the Court.

## **Section 20.4 Parental Termination**

**20.4 (a) PURPOSE:** The purpose of this chapter is to provide for voluntary or non-voluntary termination of the parent-child relationship by court order. Non-voluntary termination of parental rights over a child is a serious matter and an action that the Court may take only after all remedies have been exhausted in the attempt to maintain the stability of the family or to maintain a minimum level of positive contact between the child and his or her family, including extended family.

It is the further purpose of this section to provide meaningful and clear standards to be applied to cases involving termination of parental rights and to ensure competent, stable and on-going care of the child by prompt and final adjudication.

**20.4 (b) ENROLLMENT AND INHERITANCE STATUS:** No adjudication of termination of parental rights shall affect a child's enrollment status as a member of the Tribe or a child's degree of blood quantum or a child's rights of inheritance from natural parents, or a child's relationship with extended family members, where appropriate.

20.4 (c) GROUNDS FOR NON-VOLUNTARY TERMINATION:

(1) Termination Allowed: The Court may terminate a parent's rights when the Court finds beyond a reasonable doubt that the parent is: unfit; or the conduct or condition of the parent is such as to render him or her unable to care for the child and such conduct or condition is unlikely to change within one (1) year, and continued contact between the child and the parent on any basis is not in the child's best interest.

(2) Factors to be Considered: In determining unfitness, conduct or condition, the Court shall consider, but is not limited to, any of the following:

(A) The parent has abandoned the minor; or

(B) Emotional illness, mental illness or mental deficiency of the parent is of such duration or nature as to render the parent unable to care for the ongoing physical, mental and emotional needs of the minor within one (1) year from the date of determination of illness; or

(C) Abuse or neglect of the minor as defined by this Code; or

(D) Excessive use of intoxicating liquors or illegal substances over a period of one (1) or more years; or

(E) Imprisonment of a single parent for a period of one (1) or more years; or

(F) Adjudication by a court of a plea of guilty by a parent to the charge that the parent, either intention ally or (recklessly, willfully or wantonly) caused the death or injury of a minor's sibling; or

(G) Failure of the parent to provide a home or reason able substitute physical care and maintenance where custody is lodged with others; or

(H) Failure of the parent to maintain regular visitation or other contact with the child as designated in a plan to reunite the child with the parent; or

(I) Failure of the parent to maintain consistent contact or communication with the child over a period of one (1) year; or

(J) Rehabilitation of the parents has been unsuccessful.

(3) Parent Unknown. The rights of the parent may be terminated as provided herein if the Court finds the child was left under such circumstances that the identity of the parent is unknown and cannot be ascertained, despite diligent searching, and the parent has not come forward to claim the child within six (6) months following the finding of the child.

(4) Best Interests of Child. In considering terminating the rights of a parent, the Court shall give primary consideration to the best interests of the child as shown by physical, mental and emotional condition and needs.

20.4 (d) PETITION: The petition shall be prepared as required by this Code, and in conformity with the rules of the Tribal Court.

20.4 (e) NOTICE OF HEARING: Notice of hearing shall be given to all parties as required by this Code.

20.4 (f) SUMMONS: Summons shall be issued and served as required by this Code, and in accordance with the Rules of the Tribal Court.

20.4 (g) REPORTS:

(1) Time Limit. The child welfare caseworker shall prepare and present a written report to the Court at least ten (10) days before the termination of parental rights hearing.

(2) Contents. The report shall contain opinions of all professionals consulted with recommendations to the Court, social history of the parent and child and all other pertinent facts.

(3) Copies. A copy shall be available to the parent whose rights are being terminated at least ten (10) days before the hearing.

(4) Additional Reports

(A) A parent whose rights are being terminated may also file a written report. A copy shall be made available to the presenting officer at the same time it is filed.

(B) The Court may order other individuals or agencies to submit written reports. All reports shall be filed ten (10) days prior to the hearing and shall be made available to the parent whose rights are being terminated at the same time they are filed.



20.4 (h) APPOINTMENT OF COUNSEL OR GUARDIAN AD LITEM: In any proceeding for non-voluntary termination of parental rights, or any rehearing or appeal thereon, the Court may appoint an advocate to represent the child as counsel or guardian ad litem if the Court determines that the interest of the child are not being represented by any of the parties in the proceeding, in the Court's discretion. The Court may appoint a guardian ad litem in a voluntary termination of parental rights proceedings.

20.4 (i) HEARING:

(1) Time Limit; Purpose A termination of parental rights hearing shall be held within thirty (30) days after a petition is filed for the purpose of determining whether grounds for termination exists as set out in this Code, except by the order of the Court.

(2) Witnesses. The Court shall subpoena experts who have knowledge of the particular case, including physicians, psychiatrists, mental health professionals, social workers and any individual from the community cognizant of the traditional child-rearing methods and attitudes of the Tribe. The Court may subpoena any other witnesses or persons who the Court finds have a direct interest in the cases. If the proposed witnesses are not subject to tribal subpoena, the Court may request that they appear and testify, or obtain a subpoena from the nearest Court with jurisdiction over such witnesses.

(3) Conduct The hearing shall be conducted in accordance with this Code.

20.4 (j) JUDGMENT: If parental rights to a child are terminated the Court shall issue a judgment detailing its decision, the reasons for the decision, and order the disposition of the minor as follows:

(1) Place the minor with an extended family member; or

(2) Place the minor in a foster care or shelter care facility which has been approved by the Tribe; and in either case

(3) Place the child in long-term placement, and proceed to the adoption section of this Code if appropriate.

20.4 (k) APPEAL: A judgment of non-voluntary termination of parental rights is a final order for purposes of appeal.

20.4 (1) VOLUNTARY TERMINATION OF PARENTAL RIGHTS:

(1) Initial Procedures. The Court may terminate parental rights when the parent desires to voluntarily give up such rights. In assuming jurisdiction of a voluntary termination of parental rights proceeding, the Court shall require that:

(A) No voluntary termination shall occur before a child is ten (10) days old, except by order of the Tribal Court;

(B) No voluntary termination shall occur until a written report is submitted to the Court by a recognized social services agency indicating that social services and counseling have been offered to the parent, the consequences of the parent's actions have been fully explained to and are understood by the parent, and such action is in the best interest of the child; or

(C) A parent may waive in writing, before a judge of the court, the right to appear at a hearing, the right to notice of hearing, or both, and the Court shall assure that such waiver is knowing and voluntary.

(2) Counseling In any proceeding for voluntary termination of parental rights, if the Court has reasonable doubt as to the emotional state of the petitioner or the petitioner's ability to understand the consequences of his or her decision, the Court shall place the child with the Social Services Department for a period not to exceed thirty (30) days in order to allow the parent to consider the decision. Further, the Court shall order legal and psychological counseling for the parent in order to assure the parents understanding of the consequences of the decision and a report of the results of such counseling shall be made to the Court.

(3) Procedures after Counseling Immediately after the end of the thirty (30) day period, based upon the report received by the Court, the Court shall either:

(A) Return custody of the child to the parent;

(B) Process the petition for voluntary termination of parental rights; or

(C) Extend the period for no more than thirty (30) additional days to allow additional counseling. At the expiration of the additional counseling and based upon the results of the counseling reports, the Court shall proceed as allowed by this Code. Any child freed for placement through voluntary consent to termination of parental rights shall be placed according to the provisions of this code.

## **Section 20.5 Long Term Placement Provisions**

**20.5 (a) GUARDIANSHIP:** It shall be the policy of the Tribe to prefer guardianship as a long-term placement option for tribal children over adoption or long-term foster care.

(1) The court, when it appears necessary or convenient, may appoint guardians for the persons and/or property of children under the court's jurisdiction and of incompetents who have no guardian legally appointed by will or deed. Such appointment may be made on the petition of a relative or other person on behalf of the child or incompetent, or on a petition of the child if at least fourteen (14) years of age. Before making such appointment, the court must cause such notice as the court deems reasonable to be given to any person having the care of the child, and to such other relatives of the child as the court may deem proper, and in cases of adult incompetents, the court shall cause notice to be given to the incompetent at least five (5) days before hearing the petition.

(2) If a child is under the age of fourteen (14) years, the court may nominate or appoint his guardian. If he/she is fourteen (14) years of age or older, he may nominate his own guardian who, if approved by the court, must be appointed accordingly. If the guardian nominated by the child is not approved by the court, or if the child resides outside of KTTT Indian Country or if, after being duly cited by the court, he neglects for ten (10) days to nominate a suitable person, the court may nominate and appoint the guardian in the same manner as if the child were under the age of fourteen (14) years.

(3) When a guardian has been appointed by the court for a child under the age of fourteen (14) years, the child, at any time after he attains that age, may nominate his own guardian, subject to the approval of the court. A guardian appointed may as specified by the court have the custody and care of the education of the child and the care and management of his property until such child arrives at the age of eighteen (18) marries, is emancipated by the court or until the guardian is legally discharged, provided, however, that said guardian shall not have the authority, without express written consent of the court, to dispose of any real property of the child in any manner. Said guardian shall also have the authority to consent to the medical care and treatment of the child.

(4) The court may order that the TFAP disburse monthly reimbursement payments to the person or agency to whom custody is granted under this code, provided sufficient funds have been appropriated by the tribal council. Said disbursements must be used by the person or agency with custody of the child for the sole purpose of covering expenses incurred in the care and custody of said child and shall not be used for any other purpose. The use of said funds for any purpose other than that described in this section shall subject said person or agency to contempt of court and to any criminal and civil penalties or remedies provided by the tribal code.

The procedures for filing a Guardianship shall be in the form of a Petition or a Co-petition pursuant to this Code and the Rules of the Court.

(5) Power to Appoint Guardians for Minors; Exception: The Tribal Court is empowered to appoint a guardian, either of the person the estate or both, subject to the requirements of other codes of the Tribe, except that appointment of a guardian ad litem shall not be subject to these requirements.

20.5 (b) ADOPTION:

(1) Who may Adopt and Under What Conditions:

(A) Policy: It is the policy of the Tribe that its children should be adopted only as a matter of last resort, and alternative long-term placements such as guardianship and long-term foster placement should first be considered which maintain the connection between the child and the parent and family. A decree of adoption shall not terminate the legal relationship between the child and the child's natural family members, except by order of the Court.

(B) Who May Adopt The following persons may adopt:

1. Any adult may file a petition to adopt;
2. In the case of married persons maintaining a home together, both spouses shall be petitioners except that, if one of the spouses is the natural parent of the minor to be adopted, the natural parent shall not be a party to the petition.
3. A married person legally separated may adopt with-out the consent of his spouse.

(C) Conditions to Adoption

1. The welfare of the child shall be primary;
2. A person adopting shall be at least 10 years older than the minor;

(D) Order of Preference for Adoption: Preference in adoption shall be given in the following order:

1. Tribal member adoptive parents; at least one person of any adoptive couple must be a tribal member;

2. Families in which one person is a Tribal member or can prove decedence from a KTTT Tribal member;

3. Indian adoptive parents, which means that at least one person of any adoptive couple must be a member of a federally recognized tribe;

4. Non-Indian adoptive parents.

(2) Who May Be Adopted: The following persons may be adopted under this Code:

(A) A minor subject to the jurisdiction of the KTTT Tribal Court.

(B) A minor whose parents are both dead and who is subject to the jurisdiction of the KTTT Tribal Court.

(3) Petition: A petition for adoption shall be filed with the Court. It shall be verified under oath by the adoptive parent(s) and shall contain:

(A) The full name, residence, place of birth, date and sex of the child, with attached documentary proof of the date and place of the birth of the child to be adopted.

(B) Documentary proof of the child's membership status in the Tribe, if such proof exists;

(C) The full name, residence, date and place of birth, occupation of the adoptive parent(s), statement of relationship to the child, documentary proof of marital status, provided this not be interpreted to prohibit single parent adoptions, and tribal membership or Indian status;

(D) Proof of parental consent to the adoption where the petitioners are relatives of the child by blood or marriage; except where the natural parents have abandoned the child and cannot be located or where there is proof of a court order terminating parental rights of the parents to said child.

(E) An agreement by the adopting parent of the desire that a relationship of parent and child be established between them and the child;

(F) A full description and statement of value of all property owned, possessed or held in trust by and for the child.

(G) A citation to the specific section of this Code giving the Court jurisdiction of the proceedings; and

(H) A brief and concise statement of the facts which may aid the Court in its determination.

(4) Investigative Report

(A) Role of Tribal Caseworker The caseworker shall prepare and present to the Court a report within 60 days of the filing of a petition for adoption or a supplemental report as rendered by the Court as to the suitability of the child for adoption, as well as to the financial, moral, physical fitness, general background of the adoptive home, and adoptive parent or parents. A home study shall be conducted as part of this procedure. The tribal caseworker shall contact appropriate agencies and individuals who have relevant knowledge and such contacts and relevant information shall be included in the report. The tribal caseworker shall make written recommendations on the proposed adoption.

(B) Other Agencies: Individuals The Court may order other agencies or individuals to prepare and file written reports with the Court to aid in the Court's determination on the suitability of the proposed adoption.

(C) Copies of reports shall be served on petitioner at the same time they are presented to the Court.

(5) Consent to Adoption

(A) When Required - Written consent to adoption is required of:

1. Each biological, adoptive and acknowledged parent whose parental rights have not been involuntarily terminated, who has not voluntarily terminated his or her parental rights or has not been declared incompetent;
2. The guardian or custodian, if empowered to consent;
3. The Court, if the guardian or custodian is not empowered to consent; and
4. The minor, if he or she is over twelve (12) years of age.

(B) When not Required Written consent to an adoption is not required if:

1. The parent's rights have been involuntarily terminated;
  2. The parent has voluntarily terminated his or her parental rights;
- or

3. The parent has been declared incompetent.

(6) Procedure for Signing the Consent to Adopt: Written consents, where required by this Code, shall be attached to the petition for adoption. Written consent to an adoption shall be signed and acknowledged before a Notary Public. Consent shall not be accepted or acknowledged by the Court unless signed and acknowledged more than ten (10) days after birth of the child, except by order of the Court. An interpreter shall be provided if required by the Court. The Court shall have authority to inquire as to the circumstances behind the signing of a consent under this section.

(7) Withdrawal of Consent to Adopt: Written consent cannot be withdrawn after the entry of a final order of adoption. Consent may be withdrawn prior to the final order of adoption upon showing a preponderance of evidence at a hearing before the Court that consent was obtained by fraud, duress or coercion, or the best interests of the child require the consent to adoption be voided.

(8) Hearing on Adoption

(A) Purpose. Time Limit A hearing shall be held within 90 days of receipt of an adoption petition to determine if it is in the minor's best interest to be placed with petitioners.

(B) Procedure at Hearing Adoptive parent or parents shall appear personally at the hearing. At or before the hearing, any biological, adoptive or acknowledged parent consenting to the adoption must appear personally before the judge, in open court so the Court can determine the voluntariness and understanding with which consent was given, if the court determines the validity of the consent is an issue. All other persons whose consent is necessary shall be duly notified and shall personally appear, if the Court determines the validity of the consent is an issue.

The judge shall examine all persons appearing as to the suitability of the child for adoption, the validity of consent to adoption, the financial, moral and physical fitness, responsibility of the adoptive parents, and whether the best interests of the child will be promoted by the adoption.

The Court shall also hear natural extended family members to decide whether the child's legal relationship to the extended family should be terminated.

(9) Order

(A) Granting the Petition If the Court is satisfied it is in the best interest of the child to grant the petition, the Court may enter a final decree of adoption as follows:

1. In the case of a child who has lived with the adoptive parent for more than one year before the adoption petition has filed, the final decree of adoption shall be entered immediately; and

2. In all other cases, the Court shall order the child be placed in the legal custody of the adoptive parent for at least one year; at that time, the court shall request a supplemental report and, if the Court determines that the best interest of the child are served, shall enter the final decree of adoption immediately.

(B) Contents of Adoption Order The final order of adoption shall include such facts necessary to establish that the child is eligible and suitable for adoption, and that the adoptive home and parents are adequate and capable of providing the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence produced at the hearings.

(C) Denying the Petition If satisfied the adoption petition will not be in the best interests of the child, the petition shall be denied. The Court may request the Tribal Social Services Division or other agencies authorized to provide such services to assist in the placement and care of the child. Where the Court finds the best interest of the child will not be served by the adoption, a guardian shall be appointed and suitable arrangements made for the care of the child, in accordance with the applicable provisions of this Code.

#### (10) Adoption Records

(A) Confidentiality. All records, reports, proceedings and orders are confidential, permanent records of the Court, shall be sealed and shall not be available for release for inspection by the public, except by Order of the Court.

(B) Release of Information. Notice to Biological Parent: Information contained in such records shall be released upon petition to the Court by the adopted person after reaching legal age or majority, or upon order of the Court upon showing of good and sufficient cause by persons other than the adopted person who have petitioned for such information. In either case, no information shall be released unless:

1. The biological parent(s) has been given actual and confidential notice by the Court of a petition for release of information or notice of intent to issue such information has been published in a local newspaper of general distribution without revealing the name of the biological parent; and



2. The biological parent has consented in writing before the Court to release information; the Court determines the need for information is greater than the parent's right to privacy. The Court may refuse to divulge the biological parent's name but release other information so long as the information will not lead to the discovery of the parent's name.

(11) Adoptive Birth Certificate; Release of Original Certificate: Within five (5) days of the final decree of adoption entered by the Court, the Division of Vital Statistics of the State Board of Health of the State which issued the original certificate of birth shall be notified by the Clerk of Court that the adoption has taken place, giving the full name, sex, birthday and names of natural parents, in order that a new record of birth in the new name and with the name or names of the adopting parents to be recorded; said Division shall be provided with a certified copy of the final decree of adoption.

(12) Name of Legal Status of Adopted Child: Minor children adopted by order of the Court shall assume the surname of the persons by whom they are adopted, unless the Court orders otherwise. They shall be entitled to the same rights as natural children of the persons adopting them. However, adoption does not confer tribal membership status on adopted children who would not be otherwise eligible. Adoption does not terminate the rights of natural extended family members of the child, as a group, except by Order of the Court.

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## **Section 20.6 Transfer of Jurisdiction**

**20.6 (a) POLICY:** It shall be the policy of the Tribe to request transfer of child custody proceedings taking place in state court under the Indian Child Welfare Act (ICWA) involving a KTTT Child, as that term is defined in this code, except when good cause exists to the contrary. This code contemplates the following procedure will be followed in transferring jurisdiction of child custody proceedings from State to Tribal Court: a decision by the Tribe to request transfer; a petition to the State Court requesting transfer pursuant to the ICWA; a petition for acceptance of jurisdiction by the Tribal Court; and acceptance of jurisdiction of the state court proceeding by the Tribal Court. If a question exists as to whether the Tribal Court will accept jurisdiction of a particular child custody proceeding, the Tribe may request an advisory opinion from the Tribal Court, before petitioning the state court for transfer of jurisdiction as set out below.

### **20.6 (b) PROCEDURE FOR TRANSFER OF JURISDICTION:**

(1) Assessment of Case by Social Services Department; Recommendation: Upon receipt of notice of a child custody proceeding governed by ICWA in State court,

or upon receiving notice in any other form a KTTT child is involved in a child custody proceeding as defined by ICWA before a state court, the TFAP shall prepare an assessment of the child and family's situation, and shall make a written recommendation as to whether the case should be transferred from state court to jurisdiction of the Tribal Court.

(2) Factors to be Considered in Recommendation: TEAP staff recommendation to transfer jurisdiction to the Tribal Court shall consider, among other factors, the following: age of the child and circumstances of the family, special needs of the child (if any), location of the family and whether the state is attempting to reunite the family, availability of Tribal services to serve the child's particular needs, availability of suitable KTTT tribal homes for placement of the child, whether financial assistance for the care of the child will continue if jurisdiction is transferred, and the cost to the tribe in legal fees to accomplish transfer of jurisdiction.

#### 20.7 (c) REQUESTING TRANSFER OF JURISDICTION:

(1) Petition for jurisdiction to State Court. The Tribe shall prepare a petition for transfer of jurisdiction and shall present such petition to the state court having jurisdiction over the Child in question. The petition may be presented by either the Tribe's legal counsel or the Tribe's social services staff. The petition for transfer shall state that upon granting the petition for transfer, the Tribe shall petition the tribal court for acceptance of jurisdiction, and tribal jurisdiction shall be accepted unless affirmatively declined by order of the Tribal Court.

(2) Petition for acceptance of tribal court jurisdiction. Concurrently upon petitioning the state court for transfer of jurisdiction of an child custody proceeding in state court involving a KTTT child, the Tribe shall petition the tribal court for acceptance of jurisdiction of the proceeding. The petition for acceptance shall be in a form prescribed by the court. Upon ruling affirmatively on the Tribe's petition for acceptance of jurisdiction, the tribal court shall enter an order accepting transfer of jurisdiction and an order directed to the state court to transfer its files to the tribal court.

(3) Notice to and Standing of Other Parties The tribal court shall give notice to all parties to the state court proceeding of the filing of a petition for acceptance of transfer of jurisdiction, by certified mail. All parties to the state court proceeding shall be granted standing to express their views as to whether transfer of jurisdiction should be accepted or declined. Notice to the state court parties shall include the date, time and place for the petition for acceptance hearing, and a brief explanation of the subject of the hearing.

(4) Conditions upon Acceptance of Transfer of Jurisdiction The tribal court may impose conditions for acceptance of transfer of jurisdiction of a state court child custody proceeding. For example, if witnesses who can testify to a child's dependency or neglect are beyond the tribal court's subpoena and jurisdictional authority, the tribal court may conditionally transfer upon the state court's willingness to enforce tribal subpoenas and order state employees to testify in the subsequent tribal court proceeding. If the conditions are imposed, the tribal court acceptance of jurisdiction order shall be presented to the state court which originally transferred jurisdiction, for its review and reaffirmation.

(5) Declination of jurisdiction. The Tribal Court may decline to accept the transfer of jurisdiction order entered by the state court if it finds good cause to deny such transfer. Denial of transfer must be based upon clear and convincing evidence that such transfer would not be in the best interest of the tribe, family, or child. In making its determination, the Court may examine, but not limited to, the following factors:

(A) Emotional, cultural and family ties of child and family:

(B) Should adjudication be necessary, the ability of necessary witnesses to appear in the Tribal Court.

(C) The ability of the Tribe to provide needed services, including but not limited to counseling, medical treatment, transportation, etc.

**20.6 (d) PROCEDURE UPON ACCEPTANCE OF TRANSFER OF JURISDICTION:**

Proceedings after accepting jurisdiction of a state court child custody proceeding involving a KTTT child shall take place pursuant to the applicable sections of this code. Upon acceptance of jurisdiction, the tribal court shall schedule a status hearing within thirty (30) days to conduct an initial review of the proceeding and to order appropriate changes in placement of the child or changes in the family's case plan, or enter other such orders as may be appropriate. Further proceedings shall take place according to relevant sections of this code.

**20.6 (e) PETITION FOR TRANSFER OF JURISDICTION BY PARTY OTHER THAN THE TRIBE:**

(1) Party to File Petition If the parent or custodian of a KTTT child, or the child, through the guardian ad litem petitions a state court in a child custody proceeding involving a KTTT child for transfer of jurisdiction to the tribal court, such transfer shall not be effective until accepted by the tribal court. It shall be the duty of the party petitioning the state court for transfer of jurisdiction to file a petition for acceptance of jurisdiction with the KTTT tribal court in the form prescribed by the court.

(2) Petition to be Referred to Social Services Department; Tribe Granted Automatic Standing Upon receipt of a petition for acceptance of jurisdiction from an individual, the Tribal Court shall refer the petition for an assessment by the KTTT Social Services Department. The court shall automatically grant standing to the Tribe as an interested party to express its views on whether the petition for acceptance of jurisdiction should be granted or denied. The social services staff shall have twenty (20) days from the date of referral by the tribal court to prepare a written assessment and to submit such assessment to the tribal court for its consideration.

(3) Hearing Schedule: Order to be Filed with State Court A hearing on the petition for acceptance of jurisdiction shall be scheduled at the earliest available time following submission of the Tribe's assessment. If transfer of jurisdiction is granted, the tribal court shall enter an order to that effect and shall file a copy of the order and a request that the state court transfer its files with the state court which transferred jurisdiction of the proceeding.

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### **Section 20.7 Juvenile Offender Provisions**

**20.7 (a) TAKING A MINOR INTO CUSTODY:** Law Enforcement or Presenting Officers may take a minor into custody if:

- (1) The Officer or Presenting Officer has reasonable grounds to believe a delinquent act has been committed in his presence and that the minor has committed the delinquent act; or
- (2) A custodial order pursuant to this Code has been issued for the minor; or
- (3) The Officer, Presenting Officer, or TEAP Caseworker has reasonable cause to believe a minor who is subject to the Tribal Court's jurisdiction is leaving the jurisdiction of the court.

### **20.7 (b) PETITION:**

- (1) Review and Signature on Petition The Officer, TEAP Caseworker or the Presenting Officer shall review Petitions.
- (2) Form and Content The form of the Petition shall be the form authorized pursuant to the rules of the Tribal Court. It shall state:
  - (A) The specific sections which give the Court jurisdiction; and
  - (B) The code provision which is alleged to have been violated; and

(C) The name, age and address of the minor who is subject to the Petition; and

(D) Any parties to the allegations; and

(E) The facts upon which the allegations are based, including the date, time and location at which the alleged facts occurred; and

(F) If the child is in detention or shelter care, the time and date placed in such care and reasons therefore.

(3) Assistance The presenting officer may assist in the preparation of any Petition.

20.7 (c) WARRANTS: Warrants shall be issued in accordance with the Rules of the Court.

20.7 (d) RELEASE OF MINOR FROM CUSTODY:

(1) Law Enforcement Officer A law enforcement officer, TFAP Caseworker or the Presenting Officer taking a minor into custody shall:

(A) Give warnings and explanation of due process rights required by this Code or the Rules of the Court to any minor taken into custody prior to any questioning; and (B) Release, immediately, the minor to the parent, guardian or custodian and issue verbal counselor warning as may be appropriate; or (C) Deliver, immediately, the minor to the tribal caseworker, detention, or shelter care as designated by the Court, or a medical facility if the minor is believed to need prompt medical treatment. If the minor is not delivered to the caseworker, the officer shall immediately notify the caseworker of the circumstances of the custody and location of the minor. All notifications required by this section shall be done immediately, notwithstanding weekends or holidays.

(2) Role of the Caseworker The caseworker, immediately upon delivery of the minor for custody or notification of custody, shall review the need for detention or shelter care and shall:

(A) Notify immediately the parent, guardian or custodian notwithstanding the fact that custody was taken during the weekend or holidays;

(B) Release the minor to the parent, guardian or custodian unless detention or shelter care is appropriate pursuant to this section; and

(C) In all cases, the minor shall be released to the parent, guardian or custodian within 72 hours of the time taken into custody unless the court issues an order requiring that the custody continue.

(3) Exception A minor may not be released if:

(A) A court order forbids release until further order of the court;

(B) It appears the minor is in immediate danger of physical harm; or

(C) Reasonable cause exists to believe that the minor will run away from the KTTT Service Area.

20.7 (e) DELIVERY OF MINOR TO DETENTION OR SHELTER CARE: If the parent, guardian or custodian cannot be found, and there is no relative to whom the minor may be released, or if circumstances pursuant to Section 7.11 of this Code arise, the minor shall be delivered to a place of detention or shelter care designated by the Court and the tribal Caseworker immediately shall make arrangements for the temporary care and custody of the minor.

20.7 (f) PRELIMINARY INQUIRY:

(1) Purpose The purpose is to determine the best interest of the minor and the Tribe regarding any action to be taken. To determine the best interest of the minor, the Court shall examine whether probable cause exists to believe the alleged act was committed and whether continued detention or shelter care is necessary pending further proceedings.

(2) Time Limit

(A) Minor in Custody. The preliminary inquiry shall be held within 72 hours of the beginning of detention or shelter care.

(B) Minor Released from Custody. The preliminary inquiry shall be held within (3) business days of release of the minor from detention or shelter care.

(C) Minor Never in Custody. The preliminary inquiry shall be held within ten (10) days of the filing of a complaint which is not dismissed.

(3) Presence of Minor's Parents. Guardian or Custodian If the minor's parent, guardian or custodian is not present the Court shall determine what efforts have been made to notify and obtain the presence of the parent, guardian or custodian. If it appears further efforts are likely to produce the parent, guardian, or custodian, the Court shall recess for not more than twenty-four (24) hours and direct the presenting officer to make continued efforts to obtain the presence of a parent, guardian or custodian.

(4) Dismissal of Complaint and Release of Minor If the Court determines there is no probable cause to believe the minor has committed the alleged act, the complaint shall be dismissed without prejudice and the minor released.

(5) Release from Custody If the Court determines there is probable cause to believe the minor has committed the alleged act but the minor is not in need of detention or shelter care, the minor shall be released to the custody of the parent, guardian or custodian pending final disposition of the matter. Otherwise, the minor shall be continued in custody until further order of the Court.

(6) Criteria for Detention or Shelter Care The Court may order detention or shelter care or order it to continue if the court finds probable cause exists to believe the minor committed the alleged act, such detention or shelter care is in the best interest of the child and:

(A) The act is serious enough to warrant continued detention or shelter care; or

(B) There is reasonable cause to believe the minor will run away so that he or she will be unavailable for further proceedings;

(C) There is reasonable cause to believe that the minor will commit a serious act causing damage to person or property; or

(D) There is reason to believe the child cannot be controlled by his or her parent, guardian or custodian.

(7) Plea and Disposition A minor may admit or deny that he or she committed the alleged illegal act at this inquiry. If the minor denies committing the act, the Court shall proceed as directed in this Code. If the minor wishes to admit he or she committed the alleged act, the Court must first determine that:

(A) The minor has a full understanding of his or her rights under this code; and

(B) The minor has full understanding of the consequences of admitting that he committed the alleged act; and

(C) The minor has not stated any facts that would be a defense.

If the Court determines the minor does not understand his rights, consequences of admitting committing the alleged act or the minor has stated a defense, the Court shall order the case to proceed as a youth-in-need-of-care. If the Court determines the minor understands his rights, the consequences of admitting committing the alleged act, and has not stated a defense, the Court may proceed to the dispositional hearing as allowed by this code.

20.7 (g) PLACE OF DETENTION:

(1) Place of Detention A minor alleged to be a juvenile offender may be detained, pending a court hearing, in the following places:

(A) A foster care facility in the service area licensed or approved by the TFAP;

(B) A detention facility in the service area approved by the TFAP; or

(C) A private family home in the service area approved by the Tribal Social Services Department; or

(D) A facility outside the service area that has been approved either by state in which it is located or TFAP.

(2) Exceptions. An alleged juvenile offender who is sixteen (16) years of age or older may be detained in a jail or facility used for the detention of adults only if:

(A) He or she is charged with an offense which would subject him or her to jail sentence if he or she were an adult; and

(B) A facility in Section 7.16(g) (1) is not available or would not assure adequate supervision of the minor; and

(C) Detention is in a cell separate but not removed from sight and sound of adults whenever possible and the cell is certified by the safety officer as safe for holding minors; and

(D) Adequate supervision is provided twenty-four (24) hours a day, and the minor is checked in person at least every fifteen (15) minutes.

20.7 (h) INVESTIGATION AND RECOMMENDATIONS BY THE TRIBAL CASEWORKER:

(1) Investigation The caseworker shall investigate within 48 hours of the preliminary inquiry or release of the minor to determine whether the interests of the minor and the tribe require that further action be taken.

(2) Recommendation Upon completion of the investigation, caseworker may recommend to presenting officer no further action be taken; an informal adjustment hearing; a petition be filed; or a transfer petition be filed.

(3) Failure to Investigate Failure to make the investigation shall not be grounds for dismissal of proceedings against the minor.



20.7 (i) INFORMAL ADJUSTMENT CONFERENCE:

(1) When Allowed Within five (5) days of the preliminary inquiry, the presenting officer may hold an informal conference with the minor and minor's parent, guardian, custodian, spokesperson or legal representative to discuss alternatives to the filing of a petition if:

(A) The admitted facts bring the case within the jurisdiction of the Court;

(B) An informal adjustment of the matter would be in the best interest of the minor and the tribe; and

(C) The minor and parent, guardian, custodian, spokesperson or attorney consent to an informal adjustment with knowledge that the consent is voluntary.

(2) Alternatives As a result of the informal adjustment conference, the presenting officer may:

(A) Refer the minor and parent, guardian or custodian to a community agency for needed assistance;

(B) Order terms of supervision, calculated to assist and benefit the minor and parent, guardian or custodian and which regulate the minor's activities and those of the parent, guardian or custodian and which are within the ability of the minor to perform.

(C) Accept and offer of restitution voluntarily made by the minor; or

(D) File a petition pursuant to this Code if it appears no other alternative will be in the best interests of the minor and the Tribe.

(3) Written Agreement to Informal Adjustment

(A) Content. The presenting officer shall set out, in writing, the agreement and conclusions reached at the informal hearing conference. All parties shall sign the agreement and receive a copy of it.

(B) Time Limit. An informal adjustment period shall not exceed six (6) months, except by order of the Court.

(C) Review. The caseworker shall review minor's progress every 30 days. If, at any time after initial 30 day period, but before the end of the six (6) months, caseworker concludes the agreement is not being followed caseworker shall recommend the presenting officer file a petition pursuant to this Code.

(D) Approval by Presenting Officer The presenting officer shall have final authority to accept or reject a proposed informal adjustment conference. The presenting officer must accept or reject the agreement within five (5) days. All parties to the informal adjustment conference shall be told by the presenting officer at the beginning of the conference that he or she has the authority to accept or reject any agreement the parties reach.

(E) Notice of Informal Adjustment Agreement to the Court The presenting officer shall file copy of the informal adjustment agreement with the Court.

(F) Disposition Upon Completion of Agreement If the informal adjustment agreement is followed and the caseworker does not recommend the filing of a petition during the informal adjustment period, the presenting officer shall dismiss the complaint against the minor with prejudice at the end of the agreement period.

(4) Use of Statements Made. No written or oral statements made during the informal adjustment conference may be used against a minor or minor's parents if a petition is filed.

20.7 (j) PETITION: The petition shall be prepared as required by this Code and filed within three (3) days after it is determined or recommended that a petition should be filed.

20.7 (k) NOTICE OF HEARING: Notice of a hearing shall be given to all parties as required by the Rules of the Court.

20.7 (l) SUMMONS: Summons shall be issued and serve as required by the Rules of the Court.

20.7 (m) HEARING ON A PETITION (ADJUDICATION):

(1) Time Limit. A hearing on the petition shall be held within 10 days after the petition is filed.

(2) Purpose. The court shall conduct the hearing for the primary purpose of determining if a minor committed the alleged illegal act.

(3) Plea. If the minor wishes to admit that he or she committed the alleged act, the Court shall proceed as required in Section 7.16(f) (7) of this Code.

(4) Disposition. If the Court finds the minor committed the alleged illegal act, the Court shall dispose of the matter in a manner least restrictive to the minor and consistent with the best interests of the minor and the Tribe as allowed in Section 7.12(e) of this Code.

(5) Final Order. A finding that the minor is a juvenile offender is a final order for purposes of appeal.

**20.7 (n) PROBATION REVOCATION HEARING:** A minor alleged to have violated the terms of probation may be proceeded against in a probation revocation hearing. All procedures, rights and duties applicable to juvenile offender petitions shall be followed in a probation revocation proceedings.

## **Section 20.8 Miscellaneous Provisions**

### **20.8 (a) COMPULSORY SCHOOL ATTENDANCE:**

(1) Compulsory School Attendance: Responsibility Any qualified student and any person who, because of age, is eligible to become a qualified student as defined by Oregon State Law until attaining the age of sixteen (16) shall attend a public or private school or a state institution. A person shall be excused from this requirement if:

(A) The person is specifically exempted by law from the provisions of this section;

(B) The person has graduated from a high school;

(C) The person is at least fourteen (14) years of age and has been excused from the local school board or its authorized representative upon a finding that the person will be employed in a gainful trade or occupation or engaged in an alternative form of education sufficient for the person's educational needs and the person having legal custody and control consents:

(D) The person is excused from the provision of this section by the superintendent of schools of the school district in which the person is a resident with consent of the person having legal custody and control of the person to be excused and such person is under sixteen (16) years of age; or

(E) The person is judged, based on standards and procedures adopted by the Oregon State Board of Education, to be unable to benefit from instruction because of learning disabilities or mental, physical or emotional conditions.

(2) A person subject to the provisions of this Section shall attend school for at least the length of time of the school year that is established in the school district in which the person is a resident.

(3) Any person having legal custody and control of a person subject to the provision of this Section is responsible for the school attendance of that person.

(4) Certificates of Employment

(A) Full-Time School Attendance Not Required. Any student subject to the provisions of this Section attaining the age of sixteen (16) may be excused from full-time school attendance by issuance of a certificate of employment by the superintendent of schools of the school district in which the student is a resident or is employed. The certificate of employment shall only be issued upon satisfactory assurance to the superintendent of schools that the student will be definitely employed in a gainful trade or occupation.

(B) Contents of Certificate. The certificate of employment shall contain the following information:

1. The name, age and residence of the person excused from full-time school attendance;
2. By whom the person is to be employed or is employed;
3. The last class/grade attended by the person; and
4. A statement that the person is excused from full time school attendance until the certificate is revoked.

(C) Expiration of Certificate. If and when the employment certification is revoked or expires and the person is still under 18 years of age, then the compulsory school attendance laws will be reapplied to that person.

(5) Enforcement of Attendance Law/Penalty

(A) Responsibility for Enforcement Each local school board and each governing authority of a private school shall initiate the enforcement of the provisions of the Compulsory School attendance Section for students enrolled in their respective schools.

(B) Procedure To initiate enforcement of the provisions of the Compulsory School Attendance Section, a local school board or governing authority of a private school or their authorized representatives shall give written notice by certified mail to or by personal service on the parent, guardian or one having custody of the person subject to the provisions of the Compulsory School Attendance Section. Any person continuing to violate the provisions of the Compulsory School Attendance Section after receiving written notice as provided by this section shall be reported to the

Tribal Court and shall be considered to be a neglected child or a child in need of supervision and thus subject to the provisions of the this code.

(C) Failure to Enforce. Any person failing his responsibility for initiating enforcement of Subsection B. of this section is guilty of neglect.

(D) Neglect by Parent. Guardian or Custodian After receiving notice, any parent, guardian or custodian of a person continuing to violate the provisions of the Compulsory School Attendance Section is guilty of neglect if the parent, guardian or custodian by act or omission, caused the continuing violation.

(6) Religious Instruction Any student may be excused from school to participate in religious activities with the written consent of the student's parent, guardian or custodian.

#### 20.8 (b) EMANCIPATION:

(1) Requirements. The Tribal Court may declare a child emancipated either pursuant to a petition or as a dispositional alternative if the child:

(A) Wishes to be free from parental control and protection and no longer needs that control and protection; or

(B) Is a minor-in-need-of-care or Juvenile Offender as defined by this Code; and all of the following exist.

(2) Requirements for Emancipation: Before a minor may be emancipated, he shall:

(A) Be sixteen (16) years of age; and

(B) Be self-supporting; and

(C) Understand the consequences of being free X from parental control and protection; and

(D) Have an acceptable plan for independent living.

(3) Procedure for Emancipation

(A) Petition A minor may petition the Tribal Court for a declaration of full or partial emancipation. The petition shall be verified and shall state specific facts which will support a declaration of emancipation

(B) Notice Before the petition is heard, notice shall be given to the minor's parent' (s) , guardian or custodian as required by this Code.

(C) Findings If the Court finds that the requirements of Section are met, the Court may grant all or part of the petition, unless, after having considered all of the evidence, it finds that emancipation would not be in the best interests of the child.

(D) Declaration If the Court grants all or part of the petition, it shall immediately issue a declaration of emancipation.

(4) Purpose for Emancipation An emancipated minor shall be considered an adult over the age of eighteen (18) for all purposes except that they shall remain subject to the laws requiring compulsory school attendance and to the continuing jurisdiction of the Tribal Court.

#### 20.8 (c) ESTABLISHMENT OF PARENTAGE AND SUPPORT:

(1) Child's Right to Support: The parents are jointly liable for the support of the child until he or she reaches eighteen (18) years of age, is emancipated, or the parental rights are terminated, notwithstanding the child's parents have never been married to each other.

(2) Establishing Parentage: The parentage of a child may be established by:

(A) A written acknowledgement by a parent that he is the father of or she is the mother of the child, and which is filed with the Tribal Court; or

(B) A judicial determination by the Tribal Court.

(3) Proceedings to Establish Parentage and Compel Support:

(A) When and By Whom Proceedings May be Filed:

i. Proceedings to establish parentage may be brought in Tribal Court any time before the child is 18 years of age by a parent or the minor acting through a guardian if the complainant parent dies or becomes disabled, or by the Tribe; and

ii. Proceedings to compel support from a parent may be brought in Tribal Court at any time until a child reaches the age of 18 or becomes an adult through emancipation or marriage, and shall be brought by a complaining parent, by the minor if the complainant dies or becomes disabled or by the Tribe. Proceedings on behalf of a minor may be brought by the custodian of the minor.

(B) Form of Petition; Summons: Procedures

i. The petition shall be in the form approved by the Tribal Court and shall charge the person named as respondent with being the father or mother of the minor and demand that such person be compelled to support the minor;

ii. Summons shall be issued and served as in other actions in this Code; and

iii. Procedure shall be the same as in other Tribal Code actions.

(C) Judgments. The Court shall enter its order determining the child's parentage and support, if any, at the conclusion of the adjudicatory hearing.

(4) Starting and Completing Proceedings may be started before the birth of the child, but, unless the alleged father consents, trial will not be held until at least 15 days after the birth of the child.

(5) Rights of a Child Once Parentage is Established After the parentage of a child is established, the child has the same rights of inheritance from the person who is established as a parent that a child born as a result of a lawful marriage has under tribal law.

#### 20.8 (d) APPEAL:

(1) Procedure Upon establishment of a Tribal Appellate Court, an appeal may be taken from any order, decree or judgment of the Tribal Court under this Code to said Appellate Court. Such appeal shall be taken in the same manner in which appeals are taken from judgments or decrees of the Tribal Court. Except as otherwise provided in this code, the appeal must be taken within one month from the entry of the order, decree or judgment appealed from.

(2) Stay Pending Appeal Unless the Court stays its order, the dependency of an appeal shall not stay the order or judgment appealed from in a children's case. Where the order or decree appealed from directs a change of legal custody of a child, the appeal shall be heard and decided at the earliest practicable time. The name of the child shall not appear on the record on appeal.

20.8(e) FULL FAITH AND CREDIT: The Court shall give full faith and credit to State and Tribal child custody orders, where the state and tribe reciprocate in giving full faith and credit to Court Orders of the KTTT Tribal Court, and where such orders are consistent with the public policy of the tribe, the intent of the Indian Child Welfare Act, and the laws and customs of the Tribe.

#### 20.8 (f) STANDARDS FOR DETENTION AND SHELTER CARE FACILITIES:

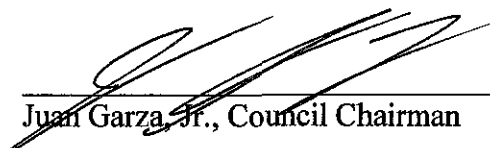
(1) Rules and Regulations. The Tribal Council shall adopt written rules and regulations governing the operation of detention and shelter care facilities.

(2) Content of Rules and Regulations. The Rules and Regulations shall include but are not limited to the following items:

- (A) cleanliness standards;
- (B) heat, water and lights standard;
- (C) personnel standards;
- (D) visiting privileges;
- (E) occupancy standards;
- (F) provisions for medical and dental care;
- (G) provisions for food, clothing and other personal items.



**READ, PASSED, APPROVED AND ENACTED** at a duly called Tribal Council meeting on the 8<sup>th</sup> day of July, 2008, and so shown by our signatures.

  
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Juan Garza, Jr., Council Chairman

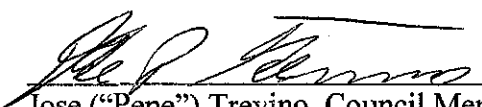
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Jesus Anico, Council Secretary

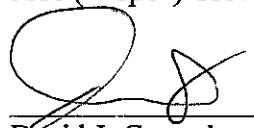
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Rogelio Elizondo, Council Treasurer

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Jose ("Pepe") Trevino, Council Member

7/8/08  
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David J. Gonzalez, Council Member

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