



ORDINANCE NO. 18- 02

**AN ORDINANCE OF THE BUSINESS COUNCIL OF THE
BLUE LAKE RANCHERIA ADOPTING A CHILD
WELFARE ORDINANCE.**

The Business Council of the Blue Lake Rancheria hereby ordains as follows:

Section 1. Findings and Declarations. The Business Council of the Blue Lake Rancheria (“Tribe”) finds and declares that the purpose of this Ordinance is:

A. To protect the best interests of Tribe’s children, to prevent the unwarranted breakup of the Tribe’s families, to maintain the connection of Tribe’s 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 the Tribe’s children, pursuant to the authority vested in the Business Council by Article V, Section 6(q) of the Constitution of the Blue Lake Rancheria;

B. To foster coöperative intergovernmental relations between the Tribe and the State of California, and other states and Indian tribes with regard to the welfare of the Tribe’s children and families;

C. To provide child welfare services to the Tribe’s children and families that are in accord with the traditions, laws, and cultural values of the Tribe; and

D. To preserve the opportunity for the Tribe’s children to learn about their culture and heritage, and to become productive adult members of the Tribe by experiencing their culture on a permanent basis.

Section 2. Adoption of a New Child Welfare Ordinance. A new ordinance, entitled “Child Welfare Ordinance” is hereby added to Title _____, Article 1, Chapter 1 of the Blue Lake Rancheria Tribal Code and shall provide as follows:

TITLE _____

ARTICLE 1. CHILD WELFARE

CHAPTER 1. GENERAL PROVISIONS

Section:

_____	.1.1.010	Definitions
_____	.1.1.020	Jurisdiction; Continuing Jurisdiction
_____	.1.1.030	Confidentiality; Records Maintenance and Protection
_____	.1.1.040	Medical Examinations
_____	.1.1.050	Payment of Fees and Expenses
_____	.1.1.060	Responsibilities of Adults
_____	.1.1.070	Guardian Ad Litem
_____	.1.1.080	Commencement of Action
_____	.1.1.090	Standard of Proof
_____	.1.1.100	Use of Reports in Juvenile Proceedings
_____	.1.1.110	Consolidation
_____	.1.1.120	Presence of Parent, Guardian, Custodian, or Guardian Ad Litem
_____	.1.1.130	Grounds for Re-Hearing
_____	.1.1.140	Modification, Revocation, or Extension of an Order
_____	.1.1.150	Testimony by Videotape

_____ **.1.1.010 Definitions.** The terms of this Ordinance shall be liberally construed to give full effect to the purposes for which it was enacted. The terms of this Ordinance shall be interpreted to encourage jurisdiction over children who come under this Ordinance and to facilitate the authority of the Tribal Court of the Blue Lake Rancheria to act to protect the interests of the Tribe's children and families. The terms of this subsection shall be interpreted in light of the Tribe's laws, customs, and traditional child-rearing practices. Terms not specifically defined in this Ordinance shall be defined according to their normal usage or as defined in the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901, *et seq.* ("ICWA"), as appropriate.

For purposes of this Ordinance, the following terms shall have the following meanings:

- A. "Administrative review" shall mean a case review system to review the case plan and the placement of each child receiving foster care maintenance payments from state or federal funds by a panel of no less than three (3) appropriate persons

designated by the Business Council. The Social Security Act, as amended by the Adoption Assistance and Child Welfare Act of 1980, P.L. 96-272, shall set the minimum requirements for an administrative review.

- B. "Administrative Review Panel" shall mean the panel comprised of no less than three (3) appropriate persons responsible for reviewing the case plan and placement of each child who receives foster care maintenance payments from state or federal funds.

- C. "Best interests of the minor" shall mean the preservation of the connection, or the creation of such a connection if one does not currently exist, between a minor of the Tribe and his/her family, culture, 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 minor may be met. "Best interests of the minor" is used interchangeably herein with "best interests of the ward."

- D. "Case plan" shall mean a written document that is required for each child under the jurisdiction of the Court in cases where juvenile dependency or child custody proceedings are at issue, including cases regarding the disposition of Minors in Need of Care, which shall include a detailed service plan designed to reunite the family. The case plan shall be designed to achieve placement of the minor in the least restrictive and most family-like setting available that is in close proximity to the parent's home consistent with the best interests of the minor. The case plan shall include, at a minimum:
 - 1. The family responsible for provision of the services;
 - 2. The timeframe in which the services will be provided;
 - 3. The standard that will be considered compliance with the services;
 - 4. The respective responsibilities of the Department, the family, and the child in making the services available and in taking advantage of such services; and
 - 5. All requirements of the Social Security Act, as amended by the Adoption Assistance and Child Welfare Act of 1980, P.L. 96-272, for case plans where the child is receiving foster care maintenance payments from federal or state funds.

In the event that reunification is determined not to be in the best interests of the minor, the family, and/or the Tribe, the service plan shall be designed to achieve other appropriate permanent placement goals that are in the best interests of the minor, the family, and/or the Tribe; provided, however, that such goals are not inconsistent with other provisions of this Ordinance.

- E. "Case review system" shall mean 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 Court and the Department or Administrative Review Panel, if appropriate.
- F. "Caseworker" is the person designated by the Department for purposes of carrying out the duties and responsibilities under this Ordinance.
- G. "Child," "minor," or "Tribe's child," as used interchangeably herein, shall mean any person under eighteen (18) years of age who has not been emancipated from his/her natural parents and who is under the jurisdiction of the Court, including, but not limited to, a child who is a member of the Tribe, a child who is eligible for membership in the Tribe, a child of a member of the Tribe or of his/her spouse, a child by the consent of the parties with custody of such child, or an Indian child who resides within the Tribe's trust lands.
- H. "Court" shall mean the Tribal Court of the Blue Lake Rancheria.
- I. "Court investigator" shall mean an investigator with the same minimum qualifications as a probation officer or a social worker for the Tribe's Social Services Department.
- J. "Custodian" shall mean a person other than a parent or guardian who has custody of a minor and who provides food, shelter, and supervision to the minor.
- K. "Days" shall mean calendar days; provided, however, that if the last day of a time period prescribed by this Ordinance falls on a Saturday, Sunday, or legal holiday, then the time period shall continue to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- L. "Delinquent act" shall mean an act that is designated as a crime or civil offense under the Tribe's laws.

- M. "Department" shall mean that entity designated by either the Tribe or the Court that is responsible for investigating all allegations of abuse and neglect, and proceeding according to the provisions of this Ordinance, if appropriate.
- N. "Domicile" shall mean the permanent residence of an individual. The domicile of a child is presumed to be that of the child's mother, unless proven otherwise.
- O. "Extended family" shall mean a person who is a tribal member and who has reached the age of eighteen (18) and is the minor's great-grandparent or grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first cousin, step-parent, or traditionally appointed custodian.
- P. "Foster care" shall mean a social service that 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.
- Q. "Guardian" shall mean a person other than the minor's parent who is by law responsible for the care and custody of that minor or his/her estate, or both.
- R. "Guardian ad litem" shall mean 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 minor's best interests.
- S. "Minor in Need of Care" shall mean a child who has been found to be in one or more of the following situations:
1. "Abused minor" – A minor who has suffered or is likely to suffer a non-accidental physical injury that causes or creates a substantial risk of death, disfigurement, impairment of bodily functions, or serious physical or emotional harm, as determined by appropriate medical or professional personnel, or has been sexually abused or subjected to the threat of sexual abuse;
 2. "Neglected minor" – A minor whose parent or custodian fails or is unable to carry out their parental or custodial duties to the extent that the child's physical or emotional health, safety, welfare, or intellectual development are harmed or threatened, 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 his or her own;

3. "Abandoned or dependent minor" – A minor whose parent or custodian has left the minor without reasonable arrangements for care and supervision such that the physical or emotional health of the minor is affected or threatened, or a minor who has no parent or other custodian able, willing, and available to fulfill parental duties; or
 4. "Delinquent minor" – A minor who has been found by a competent court to have committed repeated delinquent acts or omissions, including violations of any criminal laws or law and order ordinances, or a minor who is beyond the control of his/her parents or custodians to the extent that outside assistance is required.
- T. "Parent" shall include natural or adoptive parents, but does not include persons whose parental rights have been terminated, nor does it include an unwed father whose paternity has not been acknowledged or established.
- U. "Presenting officer" shall mean the law enforcement officer authorized under this Ordinance to present cases, which arise under the provisions of this Ordinance, to the Court. In the absence of a presenting officer, the Caseworker may be authorized to act.
- V. "Probable cause" shall mean facts and circumstances that would warrant a reasonable person to conclude that the individual in question has committed a certain act. It is an objective standard that focuses on facts and circumstances. It requires more than mere suspicion that a suspect committed the pertinent act, but not as much as would be required to prove the suspect guilty beyond a reasonable doubt.
- W. "Reasonable suspicion" shall mean a belief based upon articulable information more than a mere hunch used by a reasonable person or officer that the suspected individual has or is about to engage in certain activity.
- X. "Reservation" shall mean all lands within the boundaries of the Blue Lake Rancheria and all lands held in trust by the United States of America for the Blue Lake Rancheria.

- Y. "Shelter care" shall mean a home or other living facility used as a temporary living place for a minor pending the return of the minor to his/her family, or his/her placement in a residential facility designed for long-term placement that does not physically restrict the minor.
- Z. "Status offender" shall mean a minor who:
1. Does not comply with the requirements of the compulsory school attendance section of this Ordinance;
 2. Disobeys, continually and habitually, the reasonable and lawful demands of his parent, guardian, or custodian and who is beyond parental control; or
 3. Has left the home of the parent, guardian, or custodian without consent and has remained away for at least twenty-four (24) hours.
- AA. "Ward" shall mean a minor who is the subject of a guardianship petition filed under the provisions of this Ordinance.

1.1.020 Jurisdiction; Continuing Jurisdiction.

- A. Jurisdiction. The Court shall have jurisdiction over all child welfare matters that arise under this Ordinance and Ordinance No. 07-01, entitled "An Ordinance of the Business Council of the Blue Lake Rancheria Establishing a Tribal Court," subsection 11.1.1.030. 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 Ordinance, regardless of whether they reside on or off the Tribe's reservation or service area or are domiciled on the Tribe's Reservation. The Tribe shall also have jurisdiction over the Tribe's children who reside beyond the service area of the Tribe. The Tribe acknowledges that the jurisdiction of the Court over children under this Ordinance may, in some cases, be concurrent with the jurisdiction of other sovereigns.
- B. Continuing Jurisdiction. In every action under this Ordinance where there is Court jurisdiction:
1. The Court shall retain continuing jurisdiction over the parties;

2. The consent of the parties to the jurisdiction of the Court cannot be withdrawn once given whether such consent was given expressly or impliedly;
3. Personal jurisdiction cannot be defeated by the relocation of a party after jurisdiction is established; and
4. Personal jurisdiction cannot be defeated by a party's voluntary relinquishment of enrollment and membership with the Tribe.

____.1. 1.030 Confidentiality; Records Maintenance and Protection.

A. Confidentiality.

1. All Court records are confidential and shall not be open to inspection other than by Court personnel or the following persons: the minor and his/her attorneys; the minor's parent, guardian, or custodian and his/her attorney; the Caseworker and the tribal attorney; the presenting officer; or any other person the Court determines has a valid reason to view such records and who has been issued a written order describing the reasons for permitting such person to review such records.
2. All Court files, documents, or other material associated with a child custody proceeding governed by this Ordinance 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 Ordinance.
3. Disclosure of documents and material to authorize public agencies, whether tribal, federal or state, in the performance of the official duties of those agencies shall not violate this section.
4. All records included within this section shall be kept in a secure place by the clerk of the Court, and shall be released only pursuant to procedures developed by the Chief Judge of the Court. No other release of information shall be permitted without an order of the Court.

B. 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.

C. Destruction of Records. All records of the minor shall be destroyed when the minor is no longer subject to the Court's jurisdiction, except that records involving adoption or abuse of a minor shall not be destroyed and shall remain sealed until further order of the Court.

_____.**.1.1.040 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.

_____.**.1.1.050 Payment of Fees and Expenses**. There shall be no fee for filing a petition under this Ordinance. 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 the Court.

_____.**.1.1.060 Responsibilities of Adults**.

A. Parental Responsibility.

1. Parent as Party. The parent of a child within the jurisdiction of the Court may be made a party to a petition if the child is alleged to be a Minor in Need of Care or a juvenile offender.
2. Disposition. The Court may order the parent under this section to submit to counseling, participate in any probation or other treatment program and, if the child is committed or institutionalized, to participate in any institutional treatment or counseling program, including attendance at the site of the institution.
3. Fines. A parent shall not be liable for any fine their child may be ordered to pay.
4. 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:

- a. The child is adjudicated to be a Minor in Need of Care, or a juvenile offender; and
- b. The Court orders that the child be placed with an agency, institution, or an individual other than the parent.

B. Other Audits. The Court shall join as a party in any proceeding under this Ordinance any adult necessary for proper disposition of any case heard pursuant to this Ordinance.

C. Enforcement. The Court may enforce any of its orders issued under this section by use of its contempt power.

_____. **.1.1.170 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 interests of the minor conflict with the interests of parents, guardians, or custodians or when it appears to the Court that the best interests of the minor warrant the appointment.

_____. **.1.1.080 Commencement of Action**.

A. Petition. Except as otherwise provided below, proceedings in cases under this Ordinance are commenced by petition.

B. Exceptions to Petition. In the case of violations of motor vehicle or boating laws, fish and game laws, or the Tribe's Law and Order Ordinance, a petition shall not be required. The issuance of a traffic citation, other citation, or summons for these violations is sufficient to invoke the jurisdiction of the Court. Unless the Court orders otherwise, a preliminary investigation is not required in such cases.

C. Contents of Petition. A petition shall be entitled "In the Matter of _____, a minor," and shall set forth the following:

1. The name, birth date and residence of the minor;
2. The names and residences of the minor's parent, guardian or custodian;

3. A citation to the specific section of this Ordinance, which gives the Court jurisdiction of the proceedings;
4. Where applicable, a citation to the section of the Tribe's Law and Order Ordinance that the minor is alleged to have violated;
5. If the minor is in detention or shelter care, the place of detention or shelter care and the time he/she was taken into custody; and
6. A concise statement of the facts underlying the petition.

D. Preparation of Petition. The statements in the petition may be upon information and belief and the petition shall be prepared, verified, and signed by the presenting officer or Caseworker.

E. Dismissal. The Court may dismiss a petition at any stage of the proceedings.

_____. **.1.1.090 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. The standard of proof for all other hearings under this Ordinance shall be clear and convincing evidence. The Court shall review the applicable case plan and its implementation by the Department 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 minor's return to his/her home. The Court shall include such findings in its order upon a review or disposition.

_____. **.1.1.100 Use of Reports in Juvenile Proceedings**. For the purpose of establishing that a child is a Minor 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. The Court shall consider only evidence in any of these reports or documents.

_____. **.1.1.110 Consolidation**. When more than one (1) child is involved in the same situation which may be found to constitute abuse or neglect, or when more than one (1) child is alleged to be involved in the same law violation, the proceedings may be consolidated, except that separate hearings may be held with respect to disposition.

_____.**1.1.120 Presence of Parent, Guardian, Custodian, or Guardian Ad Litem.**
The Court shall endeavor to ensure the presence of one or both parents, a guardian, or custodian of the minor at all hearings.

_____.**1.1.130 Grounds for Re-Hearing.** A parent, guardian, or custodian of any child whose status has been adjudged in a proceeding under this Ordinance or any adult affected by an order or judgment in a proceeding under this Ordinance may, at any time, 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 that 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 interests of the minor.

_____.**1.1.140 Modification, Revocation, or Extension of an Order.**

A. Upon Motion. The Court may modify, revoke, or extend an order at any time upon the motion of the following:

1. The minor and his/her attorney;
2. The minor's parent, guardian, or custodian, and his/her legal representative, if appropriate;
3. The Caseworker; or
4. The presenting officer.

B. Hearing. Hearings to modify, revoke, or extend a Court order shall be conducted according to the Rules of the Court.

_____.**1.1.150 Testimony by Videotape.** At the discretion of the Court, and where necessary to protect the best interests of the minor, the Court may permit minors to testify by videotape, or take other steps necessary to protect the minor in proceedings under this Ordinance.

CHAPTER 2. MINOR IN NEED OF CARE

Section:

_____	.1.2.010	Minor in Need of Care Policy Provision
_____	.1.2.020	Duty to Investigate and Report Abuse and Neglect
_____	.1.2.030	Investigations and Reports
_____	.1.2.040	Petition; Minor in Need of Care
_____	.1.2.050	Petition Process
_____	.1.2.060	Taking a Minor Into Emergency Custody
_____	.1.2.070	Release of a Minor From Emergency Custody
_____	.1.2.080	Emergency Custody Order
_____	.1.2.090	Emergency Placement
_____	.1.2.100	Preliminary Inquiry
_____	.1.2.110	Investigation and Recommendation by the Caseworker
_____	.1.2.120	Informal Adjustment Conference

_____ **.1.2.010 Minor in Need of Care Policy Provision.** It is the policy of the Tribe to ensure an adequate physical and emotional environment that will protect the health, safety, and development of all the Tribe's children; to compel the parents or custodians of the Tribe's children 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 the Tribe's 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/her family and the tribal community.

_____ **.1.1.020 Duty to Investigate and Report Abuse and Neglect.**

- A. 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 the Department or a tribal law enforcement agency. The Department or a tribal law enforcement agency shall immediately investigate all allegations of abuse and neglect, and, if appropriate, proceed according to the provisions of this Ordinance.

- B. Persons Required to Report. Those persons who are required to report suspected abuse or neglect include any physician, nurse, dentist, optometrist, or 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.

- C. Other Persons Reporting. Any person may make a report of suspected abuse or neglect to the proper tribal officials.
- D. Anonymity. Those persons reporting, except those specified in the section of this Ordinance entitled "Persons Required to Report," may remain anonymous if the Court so determines.
- E. Immunity from Liability. All persons or agencies reporting known or suspected instances of abuse or neglect in good faith shall be immune from civil liability and criminal prosecution.

.1.1.030 Investigations and Reports.

- A. Required Investigations. The Department shall initiate all investigations of matters that arise under this Ordinance where any allegation that a minor has been abused or neglected is made. The Court may require that an investigation be made and a report be submitted to the Court in writing in all cases under this Ordinance in which a petition has been filed, except violations of traffic, fish and game, boating, and law and order laws. Investigations with respect to juvenile offenders shall be submitted to the Court for dispositional purposes only and shall not be submitted until after adjudication is completed and the Court has found that the minor has committed the alleged acts.
- B. Scope of Investigation. The investigation shall cover the minor's home environment, history and associations, the present condition of the minor and family, and recommendations as to the minor'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.

.1.2.040 Petition; Minor in Need of Care.

- A. The Caseworker shall review and investigate all complaints, and shall file a petition with the Court upon a preliminary determination that a minor is a Minor in Need of Care.
- B. The petition shall state:

1. The specific section(s) of this Ordinance that give the Court jurisdiction;
2. The provision of this Ordinance or a relevant court order that is alleged to have been violated;
3. The name, address, and age of the minor who is the subject of the petition;
4. The names of all parties to the allegations;
5. The facts upon which the allegations are based, including the date, time, and location where the alleged facts occurred including any alleged witnesses; and
6. 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 therefor.

.1.2.050 Petition Process

- A. Petition. The petition shall be prepared as required by the Rules of Court.
- B. Notice. 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.
- C. Summons. Summons on the petition shall be issued and served as required by the Rules of the Court.
- D. Adjudicatory Hearing. An adjudicatory hearing shall be held within thirty (30) days after the petition is filed, except upon order of the Court. The Court shall conduct the adjudicatory hearing for the purpose of determining if a minor is a Minor in Need of Care. A finding by the Court that a minor is a Minor 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 Minor in Need of Care, the Court shall dispose of the minor in a manner consistent with the best interests of the minor and which is the least restrictive setting for the minor, pursuant to the chapter of this Ordinance pertaining to disposition and placement provisions.

.1.2.060 Taking a Minor Into Emergency Custody.

- A. A tribal representative shall be designated to handle emergency custody of minors

under this Ordinance. The tribal representative shall be a law enforcement officer if the Tribe has established a law enforcement department or contracts for law enforcement with another governmental agency. In the absence of a law enforcement officer, the tribal representative shall be a Caseworker.

The tribal representative shall take a minor into emergency custody if:

1. He or she has reasonable grounds to believe that the minor is a Minor In Need of Care and is in immediate danger from his/her surroundings and that removal is necessary;
2. An emergency custody order has been issued by the Court for the minor pursuant to section __.1.2.080 of this chapter; or
3. He or she has reasonable cause to believe that a minor who is subject to the Court's jurisdiction is leaving the jurisdiction of the Court without permission.

____.1.2.070 Release of a Minor From Emergency Custody.

A. The tribal representative who takes a minor into emergency custody shall:

1. Release the minor immediately to the minor's parent, guardian, or custodian and issue verbal instructions or warnings as may be appropriate; or
2. If the tribal representative is a law enforcement officer, deliver the minor immediately to the Caseworker, a shelter care designated by the 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 law enforcement officer shall immediately notify the Caseworker of the circumstances of the emergency custody and location of the minor. All notifications required by this section shall be done immediately, notwithstanding weekends or holidays.

B. The Caseworker, immediately upon arranging for emergency custody of the minor or upon emergency placement of the minor pursuant to the provisions of this Ordinance, shall review the need for custody and shall:

1. Notify the parent, guardian, or custodian within twenty-four (24) hours of learning that custody of the minor has been taken; or
 2. Release the minor to his/her parent, guardian, or custodian, unless the minor requires shelter care or medical attention at a medical facility.
- C. A minor taken into emergency custody under this section shall be released to his/her parent, guardian, or custodian within five (5) days of the time he/she was taken into custody, unless the Court issues an order continuing custody of the minor with the Tribe. In the event of a dispute regarding a minor's release from custody during the first five (5) days of custody, the Caseworker and Department Director shall have complete authority, in the absence of a court order, to determine if the minor is to remain in custody.

_____. **1.2.080 Emergency Custody Order.** The Court shall issue an emergency custody order if the Court finds probable cause to believe that the minor is a Minor in Need of Care and one or more of the following conditions exist:

- A. 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;
- B. The minor is in immediate danger from his/her surroundings, and removal is necessary for the safety or well being of the child;
- C. The minor will be subject to injury or abuse by others or by him or herself if not placed in custody by the Court;
- D. The minor has been abandoned by his/her parent, guardian, custodian, or other person;
- E. No parent, guardian, custodian, or other person is able or willing to provide adequate supervision and care for the minor; or
- F. The minor will run away, or be taken beyond the jurisdiction of the Court, and will be unavailable for further proceedings.

_____. **1.2.090 Emergency Placement.** A minor in need of emergency placement may be placed, pending a Court hearing, in one of the following placements:

- A. With extended family members who will be able to protect the health and safety of the minor;
- B. A foster care facility licensed or approved by the Department;
- C. A private family home licensed or approved as a foster home by the Department;
or
- D. A shelter care facility by the Department.
- E. No minor who is determined to be a Minor in Need of Care shall be detained in a detention facility or in jail.

.1.2.100 Preliminary Inquiry.

- A. 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 minor once he or she is taken into emergency custody. In determining the best interests of the minor, the Court shall examine whether probable cause exists to believe the alleged act or abuse or neglect was committed and whether continued custody is necessary pending further proceedings.
- B. Time. A preliminary inquiry involving a minor shall be held within five (5) days from the time a minor is placed in emergency custody. If the minor has been released from emergency custody, the preliminary inquiry shall be held within ten (10) days from the date the minor is released from emergency custody. If a minor has not been placed in emergency custody, the preliminary inquiry shall be held within ten (10) days of the filing of a petition, if the petition is not dismissed.
- C. 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 to make continued efforts to obtain their presence.
- D. Dismissal of Petition and Release of Minor. If the Court determines that there is no probable cause to believe that the minor is a Minor 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 Minor in Need of Care, but that the minor is not in need of emergency custody, the minor shall be released to the custody of his/her parent, guardian, or custodian pending final disposition of the petition, under the protective supervision of the Tribe.

____.1.2.110 Investigation and Recommendation by the Caseworker.

- A. Investigation. The Caseworker shall investigate, within forty-eight (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.
- B. Recommendations. Upon completion of the investigation, the Caseworker shall recommend to the presenting officer:
 - 1. No further action be taken;
 - 2. An informal adjustment conference; or
 - 3. The filing of a petition, if a petition has not yet been filed.

If the presenting officer does not file a petition, the minor shall be released immediately if in emergency custody and all charges shall be dismissed unless informal adjustment is recommended, in which case the matter shall proceed as required by this Ordinance.

____.1.2.120 Informal Adjustment Conference.

- A. When Permitted. Within ten (10) days 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 filing of a petition if:
 - 1. The admitted facts bring the case within the jurisdiction of the Court;
 - 2. An informal adjustment of the matter would be in the best interests of the minor and the Tribe; and
 - 3. The minor and his/her parents, guardian, custodian, or legal representative consent to an informal adjustment with knowledge that the consent is

voluntary.

B. Alternatives. As a result of the informal adjustment conference, if the Department determines that a family is at high-risk of entering the child welfare system, the Department may:

1. Arrange for support services for the family prior to any court involvement. These services shall be designed to build and repair relationships within families and communities and prevent more drastic interventions such as removal, termination of parental rights, and adoption. Such services may range from counseling and substance abuse programs to employment services, mental health programs, social services, parenting classes, or other services developed by the tribal community;
2. Engage parents and extended kin or other community members as partners in the effort to address the specific familial problems that are leading to abuse or neglect;
3. Order terms of supervision calculated to assist and benefit the minor, parents, guardian, or custodian that regulate the activities of the minor and his/her parents, guardian, or custodian and which are within their ability to perform;
4. Accept an offer of restitution if voluntarily made by the minor and appropriate; or
5. Recommend that the presenting officer file a petition pursuant to this Ordinance if it appears that no other alternative will be in the best interests of the minor and of the Tribe. The Department shall continuously monitor and evaluate the alternative response to determine whether the alternative response is having the desired effect. If such efforts fail, court intervention shall become necessary.

C. Written Agreement.

1. 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.

2. 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.
3. 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 minor, the Caseworker shall recommend that the presenting officer file a petition pursuant to this Ordinance.
4. 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 that 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 that is reached.
5. Notice to the Court. The presenting officer shall file a copy of the approved informal adjustment agreement with the Court.
6. Disposition Upon Completion of Agreement. If the informal adjustment agreement is followed during the term of the informal adjustment period agreement and the Caseworker does not recommend the filing of a petition during the informal adjustment period, the presenting officer shall close the case file.

CHAPTER 3. DISPOSITION AND PLACEMENT PROVISIONS

Section:

_____	.1.3.010	Policy; Requirements for Removal of Minor From Home
_____	.1.3.020	Pre-Dispositional Report
_____	.1.3.030	Dispositional Hearing

_____	.1.3.040	Disposition of a Minor in Need of Care
_____	.1.3.050	Disposition of Juvenile Offender
_____	.1.3.060	Conditions Set by the Court
_____	.1.3.070	Off-Reservation Agreements
_____	.1.3.080	Periodic Review of Placement; Periodic Review
_____	.1.3.090	Permanency Planning Hearing; Disposition
_____	.1.3.100	Procedures for Placement Review Hearings
_____	.1.3.110	Periodic Reviews After Permanency Planning Hearing
_____	.1.3.120	Permanency Planning Hearing Not Required
_____	.1.3.130	Notice of Change in Minor's Placement
_____	.1.3.140	Department's Duties for Long-Term Placement; Reports and Recommendations
_____	.1.3.150	Confidentiality of Department Records

_____ **.1.3.010 Policy; Requirements for Removal of Minor From Home.** The removal of a minor from his/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 minor. 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 minor from his/her home, and reasonable efforts are to be made to make possible the child's return to his/her home; provided, however, that nothing in this chapter shall prevent the emergency removal of a minor as permitted by this Ordinance. Where more than one (1) minor is removed from a home, it shall be the Tribe's policy to keep all of the minors so removed in the same placement or shelter.

_____ **.1.3.020 Pre-Dispositional Report.**

- A. Preparation. The Court shall order the Caseworker to prepare a report to the Court for the disposition of a minor who is a Minor in Need of Care if the Court determines a report is necessary. Except by order of the Court, the pre-dispositional report shall be filed at least five (5) days before the dispositional hearing. The report shall contain a specific plan for the care and assistance to the minor or his/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 best interests of the minor.

- B. 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 the dispositional hearing. Any party may submit a

separate pre-dispositional report to the Court in the same time period set out in this subsection.

_____ .1.3.030 Dispositional Hearing.

- A. Time Limits. Except upon order of the Court, the dispositional hearing shall be held within twenty (20) days of the adjudicatory hearing on the petition for the purpose of determining the proper disposition of the minor.
- B. Exceptions. Upon request of any of the parties or the presenting officer, or if the Court determines that this would be in the best interests of the minor, the Court may hold a dispositional hearing immediately after the adjudicatory hearing on the petition upon a showing of extraordinary circumstances.

_____ .1.3.040 Disposition of a Minor in Need of Care. Upon making a finding that a minor is a Minor in Need of Care, the Court may make any of the following dispositions, listed in order of priority:

- A. Permit the minor to remain with his/her parents, guardian, or custodian under protective supervision, subject to such limitations and conditions as the Court may prescribe;
- B. Place the minor with an extended family member under protective supervision within the boundaries of the Reservation, subject to such limitations and conditions as the Court may prescribe;
- C. Place the minor in a foster home under protective supervision on the Reservation which has been licensed or approved by the Department, subject to such limitations and conditions as the Court may prescribe;
- D. Place the minor in a residential facility under protective supervision as designated by the Court;
- E. Place the minor in a foster home or an extended family member's home approved by the Department outside the Reservation, subject to such limitations and conditions as the Court may prescribe;
- F. Transfer legal custody to an agency responsible for the care of Minors in Need of Care, or to an extended family member or other person who the Court finds to be

qualified to receive and care for the minor, subject to such limitations and conditions as the Court may prescribe;

- G. Recommend that termination proceedings be initiated;
- H. Recommend that either full or partial emancipation be ordered; or
- I. Place the minor in a long-term placement, including consideration of guardianship as an alternative to adoption or termination of parental rights.

_____. **1.3.050 Disposition of a Juvenile Offender.** If a minor has been adjudged a juvenile offender, the Court may make any or all of the following dispositions:

- A. Any disposition that is authorized for the disposition of a Minor in Need of Care;
- B. Place the minor on probation, subject to conditions set by the Court;
- C. Place the minor in an institution or agency designated by the Court;
- D. Place the minor in a detention facility;
- E. Require the minor to make restitution; or
- F. In cases of violations of traffic laws or ordinances, the Court may, in addition to any other disposition, restrain the minor from driving for such period of time as the Court deems necessary.

_____. **1.3.060 Conditions Set by the Court.** The conditions or limitations which the Court may set upon a minor, his/her parent, guardian, custodian, or any other party pursuant to this Ordinance shall be designed to improve the condition of the minor if he/she is found to be Minor in Need of Care or the behavior of the minor if he/she 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 Ordinance.

_____. **1.3.070 Off-Reservation Agreements.** Whenever a minor is placed in a home or facility located off the Tribe's Reservation, 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 order of the

Court, and submitting to tribal jurisdiction. Absent such a signed agreement, any person or institution shall be deemed to have consented to return such minor to the Court by virtue of having taken placement under this Ordinance, and to have consented to tribal jurisdiction for purposes of the minor.

_____.**1.3.080 Periodic Review of Placement; Periodic Review.** Within six (6) months of the original dispositional hearing and each six (6) months thereafter so long as a minor remains within the jurisdiction of the Court, where the minor is in short-term or temporary care, or the minor is in a placement not within the preferences of this Ordinance, the status of a minor will be reviewed by the Court to:

- A. Determine the continuing need for appropriateness of Court jurisdiction and of the placement;
- B. Determine the extent of compliance with the case plan;
- C. Determine the extent of progress made toward easing or lessening the cause requiring the placement in foster care; and
- D. Project a likely date by which the minor 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 the Department 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.

_____.**1.3.090 Permanency Planning Hearing; Disposition.** Within eighteen (18) months of the original placement and every six (6) months thereafter, the Court shall hold a permanency planning hearing in accordance with this Ordinance to determine the long-term status of the minor. Recommendations made by the Department 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 not be limited to, any of the following dispositions:

- A. Returning the minor to the parent(s);
- B. Ordering that a guardian be appointed and placing the minor with the guardian;

- C. Continuing the minor in foster care for a specific period;
- D. Continuing the minor in foster care on a permanent long-term basis; and/or
- E. Recommending parental rights be terminated and the minor placed for adoption.

_____. **.1.3.100 Procedures for Placement Review Hearings.** The Court shall return a minor to the physical custody of the parent or guardian unless by a preponderance of evidence it finds that returning the minor would cause a substantial risk to the physical or emotional wellbeing of the minor. The Department has the burden of proving the risk. The Court shall review the Department and California Child Protection Services 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, which will facilitate the return of the minor to the custody of his/her parent or guardian.

_____. **.1.3.110 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, and continued appropriateness and extent of compliance with the permanent plan for the minor, the extent of compliance with the case plan, and adequacy of services provided to the minor. By the end of the eighteenth (18th) month of foster care, except by order of the Court, a decision regarding the long-term placement of the minor shall be made.

_____. **.1.3.120 Permanency Planning Hearing Not Required.** Subsequent permanency planning hearings need not be held if:

- A. The minor has been adopted;
- B. The minor is a ward on a guardian; or
- C. The minor is in long-term foster placement intended to be permanent in nature; provided that the initial dispositional hearing required under this Ordinance has been held, and provided further that the Court explicitly orders that no further permanency planning hearings are required.

_____. **.1.3.130 Notice of Change in Minor's Placement.** The removal of the minor from the parent's home, change of the minor's placement or a determination affecting a parent, guardian, or custodian's legal right to custody of a minor 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.

_____ .1.3.140 Department's Duties For Long-Term Placement; Reports And Recommendations. The Department shall have the duty to recommend long-term options for a minor within the jurisdiction of the Court. The Caseworker shall submit a report at least five (5) days before the periodic review hearing conducted before the Court. The report shall discuss compliance with the placement preferences of the Tribe, the long-term prospects of reuniting the minor with his/her family, the placement options available to the minor, and the Caseworker's recommendations as to which placement would serve the best interests of the minor.

_____ .1.3.150 Confidentiality of Department Records. All records of the Department regarding placement of a child within the jurisdiction of the Court under this Ordinance are confidential and shall be made available only to the Court or a party and a legal representative, and the minor's parent, guardian, or custodian, or to other persons the Court determines has a valid reason to seize such records.

CHAPTER 4. TERMINATION OF PARENTAL RIGHTS

Section:

_____ .1.4.010	Purpose
_____ .1.4.020	Enrollment and Inheritance Status
_____ .1.4.030	Grounds for Non-Voluntary Termination
_____ .1.4.040	Petition
_____ .1.4.050	Notice of Hearing
_____ .1.4.060	Summons
_____ .1.4.070	Reports
_____ .1.4.080	Appointment of Counsel or Guardian Ad Litem
_____ .1.4.090	Hearing
_____ .1.4.100	Judgment
_____ .1.4.110	Appeal
_____ .1.4.120	Voluntary Termination of Parental Rights
_____ .1.4.130	Legal Protections of the Rights of Great-Grandparents and/or Grandparents

_____ .1.4.010 Purpose. The purpose of this chapter is to provide for voluntary and non-voluntary termination of the parent-child relationship by court order. Non-voluntary termination of parental rights over a minor 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 minor and his/her family, including

extended family. It is the further purpose of this chapter to provide meaningful and clear standards to be applied to cases involving termination of parental rights and to ensure competent, stable, and ongoing care of the minor by prompt and final adjudication.

_____. **1.4.020 Enrollment and Inheritance Status.** No adjudication of termination of parental rights shall affect a minor's enrollment status as a member of the Tribe, a minor's degree of blood quantum, a minor's rights of inheritance from natural parents, or a minor's relationship with extended family members, where appropriate.

_____. **1.4.030 Grounds for Non-Voluntary Termination.**

- A. Termination Allowed. The Court may terminate a parent's rights when the Court finds beyond a reasonable doubt that the parent is: (1) unfit; or (2) the conduct or condition of the parent is such as to render him or her unable to care for the minor and such conduct or condition is unlikely to change within one (1) year; and continued contact between the minor and the parent on any basis is not in the best interest of the minor.
- B. Factors to be Considered. In determining unfitness, conduct, or condition, the Court shall consider, but is not limited to, any of the following:
1. The parent has abandoned the minor; or
 2. 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
 3. Abuse or neglect of the minor as defined by this Ordinance; or
 4. Excessive use of intoxicating liquors or illegal substances over a period of one (1) or more years; or
 5. Imprisonment of a single parent for a period of one (1) or more years; or
 6. Adjudication by a Court of a plea of guilty by a parent to the charge that the parent, either intentionally, recklessly, willfully or wantonly caused the death or injury of a minor's sibling; or

7. Failure of the parent to provide a home or reasonable substitute physical care and maintenance where custody is lodged with others; or
8. Failure of the parent to maintain regular visitation or other contact with the minor as designated in a plan to reunite the minor with the parent; or
9. Failure of the parent to maintain consistent contact or communication with the minor over a period of one (1) year; or
10. Rehabilitation of the parents has been unsuccessful.

C. Parent Unknown. The rights of the parent may be terminated as provided herein if the Court finds the minor 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 minor within six (6) months following the finding of the minor.

D. Best Interests of the Minor. In considering a termination of parental rights, the Court shall give primary consideration to the best interests of the minor as shown by physical, mental, and emotional condition and needs.

_____. **.1.4.040 Petition**. The petition shall be prepared as required by this Ordinance, and in conformity with the Rules of the Court.

_____. **.1.4.050 Notice of Hearing**. Notice of hearing shall be given to all parties as required by this Ordinance, and in conformity with the Rules of the Court.

_____. **.1.4.060 Summons**. Summons shall be issued and served as required by this Ordinance, and in accordance with the Rules of the Court.

_____. **.1.4.070 Reports**.

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

B. Contents. The report shall contain the opinions of all professionals consulted with recommendations to the Court and the social history of the parent and minor and all other pertinent facts.

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

D. Additional Reports.

1. 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 with the Court.
2. The Court may also 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.

_____. **.1.4.080 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 minor as counsel or guardian ad litem if the Court determines that the interests of the minor 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.

_____. **.1.4.090 Hearing.**

- A. 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 Ordinance, except by order of the Court.
- B. 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.
- C. Conduct. The hearing shall be conducted in accordance with this Ordinance.

_____.**.1.4.100 Judgment.** If parental rights to a minor 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:

- A. Place the minor with an extended family member; or
- B. Place the minor in a foster care or shelter care facility which has been approved by the Tribe; and in either case
- C. Place the child in long-term placement, and proceed to the adoption section of this Ordinance, if appropriate.

_____.**.1.4.110 Appeal.** A judgment of non-voluntary termination of parental rights is a final order for purposes of appeal.

_____.**.1.4.120 Voluntary Termination of Parental Rights.**

- A. 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:
 - 1. No voluntary termination shall occur before a minor is ten (10) days old, except by order of the Court;
 - 2. 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 interests of the minor; or
 - 3. 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.
- B. 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/her decision, the Court shall place the minor with the 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.

C. Procedures After Counseling. Immediately after the end of the thirty (30) day period set forth in subsection _____ 1.4.120 B above, based upon the report received by the Court, the Court shall either:

1. Return custody of the minor to the parent;
2. Process the petition for voluntary termination of parental rights; or
3. 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 Ordinance. Any minor freed for placement through voluntary consent to termination of parental rights shall be placed according to the provisions of this Ordinance.

_____ .1.4.130 Legal Protections of the Rights of Great-Grandparents and/or Grandparents.

- A. This Ordinance recognizes that in tribal communities, great-grandparents and grandparents are likely to play a critical role in the lives of children, a role that may be different from, but complementary to, the role of parents, including, but not limited to, being directly involved in childcare, child rearing, and the integration of children into tribal culture and community.
- B. The Court may provide legal protections of the rights of great-grandparents and grandparents to assure that, if it is perceived as beneficial in the given situation, the great-grandparents and/or grandparents continue to play prominent roles of mentors or teachers in the lives of the children involved, during and post-termination of the parental rights.
- C. The Court may also provide mechanisms to manage potential conflicts among parents, guardians, adoptive parents, great-grandparents, and grandparents.

CHAPTER 5. LONG-TERM PLACEMENT PROVISIONS

Section:

_____	.1.5.010	Guardianship Policy; Nomination; Petition; Investigation; Assessment; Status Report
_____	.1.5.020	Appointment of Guardian
_____	.1.5.030	When Proceeding to Have Minor Declared Free from Parental Custody and Control May be Brought in Guardianship Proceeding; Appointment of Investigator and Written Report; Rights of Parent
_____	.1.5.040	Guardianships Resulting from Selection and Implementation of a Permanency Plan; Application of this Section
_____	.1.5.050	Nonrelative Guardians; Nomination; Petition; Suitability; Report
_____	.1.5.060	Termination of Guardianship
_____	.1.5.070	Customary Adoption
_____	.1.5.080	Adoption

_____ .1.5.010 Guardianship Policy; Nomination; Petition; Investigation; Assessment; Status Report.

- A. Policy. It shall be the policy of the Tribe to prefer guardianship as a long-term placement option for the Tribe's children over adoption, and to prefer guardianship as an option over long-term foster care.
- B. Power to Appoint Guardians for Minors; Exception. The Court is empowered to appoint a guardian, either for the person or the estate or both, subject to the requirements of other ordinances of the Tribe, except that appointment of a guardian ad litem shall not be subject to these requirements.
- C. Nomination of Guardian of Person or Estate or Both by Parent. Subject to the subsection regarding "Manner of Nomination; Time Effective; Subsequent Legal Incapacity or Death of Nominator," a parent may nominate a guardian of the person or estate, or both, of a minor in either of the following cases:
1. Where the other parent nominates or consents in writing to the nomination of the same guardian for the same minor; or
 2. Where, at the time the petition for appointment of the guardian is filed, either:

- a. The other parent is dead or lacks legal capacity to consent to the nomination; or
- b. The consent of the other parent would not be required for an adoption of the minor.

D. Nomination of Guardian for Particular Property. Subject to the subsection regarding “Manner of Nomination; Time Effective; Subsequent Legal Incapacity or Death of Nominator,” a parent or any other person may nominate a guardian for property that a minor receives from or by designation of the nominator (whether before, at the time of, or after the nomination) including, but not limited to, property received by the minor by virtue of a gift, deed, trust, will, succession, insurance, or benefits of any kind.

E. Manner of Nomination; Time Effective; Subsequent Legal Incapacity or Death of Nominator.

1. A nomination of a guardian under this part may be made in the petition for the appointment of the guardian or at the hearing on the petition or in a writing signed either before or after the petition for the appointment of the guardian is filed. The Court shall prepare and make available for distribution at the Court Clerk’s office a form petition for the appointment of a guardian that meets the requirements of the Court’s rules and the provisions of this part for use by the petitioner in petitioning the Court for the appointment of a guardian.
2. The nomination of a guardian under this part is effective when made, except that a writing nominating a guardian under this part may provide that the nomination becomes effective only upon the occurrence of such specified condition or conditions as are stated in the writing including, but not limited to, such conditions as the subsequent legal incapacity or death of the person making the nomination.
3. Unless the writing making the nomination expressly provides otherwise, a nomination made under this part remains effective notwithstanding the subsequent legal incapacity or death of the person making the nomination.

F. Petition for Appointment; Contents.

1. A relative or other person on behalf of the minor, or the minor if twelve (12) years of age or older may file a petition for the appointment of a guardian of the minor.
2. The petition shall: request that a guardian of the person or estate of the minor, or both, be appointed; specify the name and address of the proposed guardian and the name and date of birth of the proposed ward; and state that the appointment is necessary or convenient.
3. The petition shall set forth, so far as is known to the petitioner, the names and addresses of all of the following:
 - a. The parents of the proposed ward;
 - b. The persons having legal custody of the proposed ward and, if that person does not have the care of the proposed ward, the person having the care of the proposed ward;
 - c. The relatives of the proposed ward within the second degree;
 - d. In the case of a guardianship of the estate, the spouse of the proposed ward; and
 - e. Any person nominated as guardian for the proposed ward pursuant to the subsections of this Ordinance, entitled "Nomination of Guardian of Person or Estate or Both by Parent" and "Nomination of Guardian for Particular Property".
4. If the proposed ward is a patient in or on leave of absence from a state institution under the jurisdiction of the California State Department of Mental Health or the California State Department of Developmental Services, and that fact is known to the petitioner, the petition shall state that fact and name the institution.
5. The petition shall state, so far as is known to the petitioner, whether or not the proposed ward is receiving or is entitled to receive benefits from the Veterans or Social Security Administration and the estimated amount of the monthly benefit payable by the Veterans or Social Security

Administration for the proposed ward.

6. If the petitioner has knowledge of any pending adoption, juvenile court, marriage dissolution, domestic relations, custody, or other similar proceeding affecting the proposed ward, the petition shall disclose the pending proceeding.
7. If the petitioner has accepted or intends to accept physical care or custody of the proposed ward with intent to adopt, whether formed at the time of placement or formed subsequent to placement, the petitioner shall so state in the guardianship petition, whether or not an adoption petition has been filed.
8. If the proposed ward is or becomes the subject of an adoption petition, the Court shall order the guardianship petition consolidated with the adoption petition.

G. Notice of Hearing.

1. Except as provided in subsections _____ 1.50.010(G)(6) and (7) below, at least fifteen (15) days before the hearing on the petition for the appointment of a guardian, notice of the time and place of the hearing shall be given as provided in subsections _____ 1.50.010(G)(2), (3), (4) and (5) below. A copy of the petition shall accompany the notice. The Court may not shorten the time for giving notice of hearing under this subsection.
2. Notice shall be served in the manner provided in the Court's Rules or in any manner authorized by the Court, on all of the following persons:
 - a. The proposed ward, if twelve (12) years of age or older;
 - b. Any person having legal custody of the proposed ward or serving as guardian of the estate of the proposed ward;
 - c. The parents of the proposed ward;
 - d. Any person nominated as a guardian for the proposed ward pursuant to the subsections regarding "Nomination of Guardian of

Person or Estate or Both by Parent” and “Nomination of Guardian for Particular Property”; and

- e. The Department.
3. Notice shall be given by mail sent to the address stated in the petition, or in any manner authorized by the Court, to all of the following:
 - a. The proposed guardian’s spouse, if named in the petition;
 - b. The relatives named in the petition, except that if the petition is for the appointment of a guardian of the estate only, the Court may dispense with the giving of notice to any one or more or all of the relatives; and
 - c. The person having the care of the proposed ward if other than the person having legal custody of the proposed ward.
 4. If notice is required by California Probate Code Section 1461 or the section of this Ordinance entitled “Manner of Nomination; Time Effective; Subsequent Legal Incapacity or Death of Nominator” to be given to the California Director of Mental Health or the California Director of Developmental Services or the California Director of Social Services, notice shall be mailed as so required.
 5. If the petition states that the proposed ward is receiving or is entitled to receive benefits from the Veterans or Social Security Administration, notice shall be mailed to the office of the Veterans or Social Security Administration referred to in California Probate Code Section 1461.5.
 6. Unless the Court orders otherwise, notice shall not be given to any of the following:
 - a. The parents or other relatives of a proposed ward who has been relinquished to a licensed adoption agency; or
 - b. The parents of a proposed ward who has been declared free from their custody and control.

7. Notice need not be given to any person if the Court so orders upon a determination of either of the following:
 - a. The person cannot with reasonable diligence be given the notice;
or
 - b. The giving of the notice would be contrary to the interest of justice.
8. Before the appointment of a guardian is made, proof shall be made to the Court that each person entitled to notice under this section either:
 - a. Has been given notice as required by this section; or
 - b. Has not been given notice as required by this section because the person cannot with reasonable diligence be given the notice or because the giving of notice to that person would be contrary to the interest of justice.

H. Screening. The Department shall screen the name of the guardian for prior referrals of neglect or abuse of minors. The results of this screening shall be provided to the Court.

I. Amendment of Petition to Disclose Newly Discovered Proceeding Affecting Custody. Within ten (10) days after the petitioner in the guardianship proceeding becomes aware of any proceeding not disclosed in the guardianship petition affecting the custody of the proposed ward, including any adoption, juvenile court, marriage dissolution, domestic relations, or other similar proceeding affecting the proposed ward, the petitioner shall amend the guardianship petition to disclose the other proceeding.

J. Investigation; Filing of Report and Recommendation Concerning Proposed Guardianship; Content of Report; Confidentiality; Application of Subsection.

1. Unless waived by the Court, the Department shall cause a court investigator, Caseworker, probation officer, or domestic relations investigator to conduct an investigation and file with the court a report and recommendation concerning each proposed guardianship of the person or guardianship of estate. Investigations where the proposed guardian is a relative shall be made by a court investigator. Investigations where the

proposed guardian is a non-relative shall be made by the tribal or county agency designated to investigate potential dependency. The report for the guardianship of the person shall include, but need not be limited to, an investigation and discussion of all of the following:

- a. A social history of the guardian;
 - b. A social history of the proposed ward, including to the extent feasible, an assessment of any identified developmental, emotional, psychological, or educational needs of the proposed ward and the capacity of the petitioner to meet those needs;
 - c. The relationship of the proposed ward to the guardian, including the duration and character of the relationship, where applicable, the circumstances whereby physical custody of the proposed ward was acquired by the guardian, and a statement of the proposed ward's attitude concerning the proposed guardianship, unless the statement of the attitude is affected by the proposed ward's developmental, physical, or emotional condition; and
 - d. The anticipated duration of the guardianship and the plans of both natural parents and the proposed guardian for the stable and permanent home for the minor. The Court may waive this requirement for cases involving relative guardians.
2. The report shall be read and considered by the Court prior to the ruling on the petition for guardianship, and shall be reflected in the minutes of the Court. The person preparing the report may be called and examined by any party to the proceeding.
 3. If the investigation finds that any party to the proposed guardianship alleges the minor's parent is unfit, as defined by this Ordinance or by Section 300 of the California Welfare and Institutions Code, the case shall be referred to the Department or county agency designated to investigate potential dependencies. Guardianship proceedings shall not be completed until the investigation required by tribal law or by Sections 328 and 329 of the California Welfare and Institutions Code is completed and a report is provided to the Court where the guardianship proceeding is pending.

4. The report authorized by this section is confidential and shall only be made available to persons who have been served in the proceedings or their attorneys.
5. For purposes of writing the report authorized by this subsection, the person making the investigation and report shall have access to the proposed ward's school records, probation records, public and private social services records, and to an oral or written summary of the proposed ward's medical records and psychological records prepared by any physician, psychologist, or psychiatrist who made or who is maintaining those records. The physician, psychologist, or psychiatrist shall be available to clarify information regarding those records pursuant to the investigator's responsibility to gather and provide information for the Court.
6. This subsection does not apply to guardianships resulting from a permanency plan for a dependent child pursuant to this Ordinance, or by Section 366.25 of the California Welfare and Institutions Code.

K. Assessments.

1. Each Court or county shall assess: (1) the parent, parents, or other person charged with the support and maintenance of the ward or proposed ward, and (2) the guardian, proposed guardian, or the estate of the ward or proposed ward, for Court or county expenses incurred for any investigation or review conducted by the court investigator, probation officer, or domestic relations investigator. The Court may order reimbursement to the Court or to the county in the amount of the assessment, unless the Court finds that all or any part of the assessment would impose a hardship on the ward or the ward's estate. A county may waive any or all of an assessment against the guardianship on the basis of hardship. There shall be a rebuttable presumption that the assessment would impose a hardship if the ward is receiving Medi-Cal benefits.
2. Any amount chargeable as state-mandated local costs incurred by a county for the cost of the investigation or review shall be reduced by any assessments actually collected by the county pursuant to the immediately preceding part of this Ordinance during that fiscal year.

L. Status Report; Form; Contents; Confidentiality.

1. To the extent resources are available, the Court shall implement procedures, as described in this subsection, to ensure that every guardian annually completes and returns to the Court a status report, including the statement described below. A guardian who willfully submits any material information required by the form that he or she knows to be false shall be guilty of a violation of this Ordinance and subject to a fine not to exceed Five Thousand Dollars (\$5,000). Not later than one (1) month prior to the date the status report return is required, the Clerk of the Court shall mail to the guardian, by first-class mail, a notice informing the guardian that he/she is required to complete and return the status report to the Court. The clerk shall enclose with the latter a blank status report form for the guardian to complete and return by mail. If the status report is not completed and returned as required, or if the Court finds, after a status report has been completed and returned, that further information is needed, the Court shall attempt to obtain the information required in the report from the guardian or other source. If the Court is unable to obtain this information within thirty (30) days after the date the status report is due, the Court shall either order the guardian to make him/herself available to the investigator for purposes of investigation of the guardianship, or to show cause why the guardian should not be removed.
2. The Court shall develop a form for the status report. The form shall include the following statement: "A guardian who willfully submits any material information required by this form that he or she knows to be false is guilty of a violation of this Ordinance and subject to a fine not to exceed Five Thousand Dollars (\$5,000)." The form shall request information the Court deems necessary to determine the status of the guardianship, including, but not limited to, the following:
 - a. The guardian's present address;
 - b. The name and birth date of the child under guardianship;
 - c. The name of the school that the child is enrolled in, if any;
 - d. If the child is not in the guardian's home, the name, relationship, address, and telephone number of the person or persons with

whom the child resides; and

- e. If the child is not in the guardian's home, the reason the child was moved.
 3. The report authorized by this subsection is confidential and shall only be made available to persons who have been served in the proceedings or their attorneys. The Clerk of the Court shall implement procedures for the limitation of the report exclusively to persons entitled to its receipt.
 4. The Court shall report to the Council no later than December 31st of each year regarding the costs and benefits of utilizing the annual status report.
- M. Juvenile Court to Provide Available Information. Notwithstanding any other provision of law, except provisions of law governing the retention and storage of data, the tribal juvenile court or a state family law court shall, upon request from any other state or tribal court hearing a probate guardianship matter proceeding before the Court pursuant to this subsection, provide to the Court all available information the Court deems necessary to make a determination regarding the best interest of the minor who is the subject of the proceeding, as described in this Ordinance or Section 3011 of the California Family Code. The information shall also be released to a guardianship investigator, as provided in this Ordinance, acting within the scope of his/her duties in that proceeding. Any information released pursuant to this subsection that is confidential pursuant to any other provision of law shall remain confidential and shall not be released, except to the extent necessary to comply with this subsection. No records shared pursuant to this subsection may be disclosed to any party in a case unless the party requests the agency, or the court that originates the record, to release these records and the request is granted. In countries or other jurisdictions, including tribal jurisdictions, that provide confidential family law mediation or confidential dependency mediation, such mediations are not covered by this subsection.

.1.5.020 Appointment of Guardian.

- A. Upon hearing of the petition, if it appears necessary or convenient, the Court may appoint a guardian of the person or estate of the proposed ward, or both.
- B. In appointing a guardian of the person, the Court is governed by this Ordinance and Chapter 1 (commencing with Section 3020) and Chapter 2 (commencing with

Section 3040) of Part 2 of Division 8 of the California Family Code relating to custody of a minor.

- C. The Court shall appoint the person nominated under this Ordinance as guardian of the property covered by the nomination unless the Court determines that the nominee is unsuitable. If the person so appointed is only as guardian of the property covered by the nomination, the letters of guardianship shall so indicate.
- D. Subject to subsection .1.5.020(C) above, in appointing a guardian of the estate:
 - 1. The Court is to be guided by what appears to be in the best interest of the proposed ward, taking into account the proposed guardian's ability to manage and to preserve the estate as well as the proposed guardian's concern for and interest in the welfare of the proposed ward.
 - 2. If the proposed ward is of sufficient age to form an intelligent preference as to the person to be appointed as guardian, the Court shall give consideration to that preference in determining the person to be so appointed.
- E. No Guardian of Person for Married Minor. Notwithstanding any other provision of this chapter, no guardian of the person may be appointed for a minor who is married or whose marriage has been dissolved. This subsection does not apply in the case of a minor whose marriage has been judged a nullity.

_____ .1.5.030 When Proceeding to Have Minor Declared Free from Parental Custody and Control May be Brought in Guardianship Proceeding; Appointment of Investigator and Written Report; Rights of Parent.

- A. A proceeding to have a minor declared free from the custody and control of one (1) or both parents may be brought in the guardianship proceeding pursuant to this Ordinance or Part 4 (commencing with Section 7800) of Division 12 of the California Family Code, if all of the following requirements are satisfied:
 - 1. One (1) or both parents do not have the legal custody of the minor;
 - 2. The minor has been in the physical custody of the guardian for a period of not less than two (2) years; and

3. The Court finds that the minor would benefit from being adopted by his/her guardian.

In making this determination, the Court shall consider all factors relating to the best interests of the minor, including, but not limited to, the nature and extent of the relationship between all of the following:

- a. The minor and the biological parent;
 - b. The minor and the guardian, including family members of the guardian; and
 - c. The minor and any siblings or half-siblings.
- B. The Court shall appoint a court investigator or other qualified professional to investigate all factors enumerated in the subsection .1.5.030(A) above. The findings of the investigator or professional regarding those issues shall be included in the written report required pursuant to the subsection of this Ordinance entitled “Investigation; Filing of Report and Recommendation Concerning Proposed Guardianship; Content of Report; Confidentiality; Application of Subsection.”
- C. The rights of the parent, including the rights to notice and counsel provided under this Ordinance or in Part 4 (commencing with section 7800) of Division 12 of the California Family Code, shall apply to actions brought pursuant to this subsection.
- D. This section does not apply to any minor who is a dependent of a juvenile court of the Tribe, a state, or another tribe.

_____ .1.5.040 Guardianships Resulting from Selection and Implementation of a Permanency Plan; Application of this Section. This section does not apply to guardianships resulting from the selection and implementation of a permanency plan pursuant to this Ordinance, the ICWA, or Section 366.25 or 366.26 of the California Welfare and Institutions Code. For those minors, the applicable sections of this Ordinance or the California Welfare and Institutions Code and Division I(a) (commencing with Rule 1400) of Title Four of the California Rules of Court specify the exclusive procedures for establishing, modifying, and terminating legal guardianships. If no specific provision of this Ordinance, the ICWA, or the California Welfare and Institutions Code, or the California Rules of Court is applicable, the provisions applicable to the administration of estates under the Tribe’s Probate Ordinance or Part 4 (commencing with

Section 2100 of the California Probate Code) govern so far as they are applicable to like situations.

_____1.5.050 Nonrelative Guardians; Nomination; Petition; Suitability; Report.

A. Nomination of Guardian of Person or Estate or Both by Parent. This part does not apply in any of the following cases:

1. Where the petition is for guardianship of the estate exclusively;
2. Where the proposed guardian is a relative of the proposed ward;
3. Where the Director of Developmental Services is appointed guardian pursuant to Article 7.5 (commencing with Section 416) of Chapter 2 of Part 1 of Division 1 of the California Health and Safety Code;
4. Where the Department director is appointed guardian pursuant to this Ordinance;
5. Where the public guardian is appointed guardian pursuant to Sections 27430-27436 of the Californian Government Code and Section 1540 of the California Probate Code; or
6. Where the guardianship results from a permanency plan for a dependent minor pursuant to this Ordinance or Section 366.25 of the California Welfare and Institutions Code.

B. Further Required Contents of Petition. In addition to the other required contents of the petition for appointment of a guardian, the petition shall include the following:

1. A statement by the proposed guardian that, upon request by an agency referred to in the subsection of this Ordinance entitled "Suitability of Proposed Guardian for Guardianship; Report; Confidentiality" for information relating to the investigation referred to in that subsection, the proposed guardian will promptly submit the information required;
2. A disclosure of any petition for adoption by the proposed guardian of the minor who is the subject of the guardianship petition regardless of when or

where filed; and

3. A statement whether or not the home of the proposed guardian is licensed as a foster family home.

C. Notice. In each case involving a petition for guardianship of the person, the petitioner shall mail a notice of the hearing and a copy of the petition at least fifteen (15) days prior to the hearing to the Department and, where the proposed ward has been under the jurisdiction of a state social services department, the director of the state social services department at the director's office.

D. Suitability of Proposed Guardian for Guardianship; Report; Confidentiality.

1. If the petition as filed or as amended states that an adoption petition has been filed, a report with respect to the suitability of the proposed guardian for guardianship shall be filed with the Court by the agency investigating the adoption. In other cases, the local agency designated by the Business Council to provide public social services shall file a report with the Court with respect to the proposed guardian of the same character required to be made with regard to an applicant for foster family home licensure under tribal or California law.
2. The report filed with the Court pursuant to this subsection is confidential. The report may be considered by the Court and shall be made available only to the persons who have been served in the proceeding and the persons who have appeared in the proceeding or their attorneys. The report may be received in evidence upon stipulation of counsel for all such persons who are present at the hearing or, if such person is present at the hearing but is not represented by counsel, upon consent of such person.

_____. **1.5.060 Termination of Guardianship.**

A. Majority; Death; Adoption, or Emancipation of Ward.

1. A guardianship of the person or estate or both terminates when the ward attains majority or dies.
2. A guardianship of the person terminates upon the adoption of the ward or upon the emancipation of the ward pursuant to this Ordinance or under

Section 7002 of the California Family Code.

- B. Court Order; Notice. Upon petition of the guardian, a parent, or the ward, the Court may make an order terminating the guardianship if the Court determines that it is in the best interests of the ward to terminate the guardianship. Notice shall be given for the period and the manner provided in the subsection of this chapter entitled "Notice of Hearing".
- C. Visitation Rights of Former Guardian.
1. Upon making a determination that a guardianship should be terminated pursuant to this chapter, the Court may consider whether continued visitation between the ward and the guardian is in the best interests of the ward. As part of the order of termination, the Court shall have jurisdiction to issue an order providing for ongoing visitation between a former guardian and this/her former minor ward after the termination of the guardianship. The order granting or denying visitation may not be modified unless the Court determines, based upon evidence presented, that there has been a significant change of circumstance since the Court issued the order and that modification of the order is in the best interests of the ward.
 2. A copy of the visitation order shall be filed in any court proceeding relating to custody of the minor. If a prior order had not been filed, and a proceeding is not pending relating to the custody of the minor in the court of any tribe or county, the visitation order may be used as the sole basis for opening a file in the court of the tribe or county in which the custodial parent resides. While a parent of the minor has custody of the minor, proceedings for modification of the visitation order shall be determined in a proceeding under this Ordinance or the California Family Code.
- D. Petitions Without Merit or Intended to Harass or Annoy Guardian. If a person files a petition for visitation, termination of the guardianship, or instruction to the guardian that is unmeritorious or intended to harass or annoy the guardian, and the person has previously filed pleadings in the guardianship proceedings that were unmeritorious or intended to harass or annoy the guardian, the petition shall be grounds for the Court to determine that the person is a vexatious litigant for the purposes of tribal law or Title 3(a) (commencing with Section 391) of Part 2 of the California Code of Civil Procedure.

_____.**1.5.070 Customary Adoption.** If the Court determines that it is in the best interests of the minor, and to the extent appropriate, the Court may sustain child-parent relationships with a customary adoption, which involves establishing new primary caregivers for the minor, but does not involve the termination of parental rights. In so doing, the Court may couple the customary adoption with provisions that modify or suspend parental rights.

_____.**1.5.080 Adoption.**

A. Who May Adopt; Conditions for Adoption.

1. 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, long-term foster placement, and customary adoption should first be considered because they maintain the connection between the minor and the parent and family. A decree of adoption shall not terminate the legal relationship between the minor and the minor's natural family members, except by order of the Court.
2. Who May Adopt. The following persons may adopt:
 - a. Any adult may file a petition to adopt;
 - b. 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.
 - c. A married person legally separated may adopt without the consent of his/her spouse.
3. Conditions to Adoption.
 - a. The welfare of the minor shall be primary;
 - b. A person adopting shall be at least five (5) years older than the minor.
4. Order for Preference for Adoption. Preference in adoption shall be given

in the following order:

- a. Tribal member adoptive parents, whereupon at least one (1) person of the adoptive couple must be a tribal member;
- b. Families in which one person is a tribal member or can prove descendants from a tribal member;
- c. Indian adoptive parents, which means that at least one person of any adoptive couple must be a member of or eligible for membership with a federally recognized tribe; and
- d. Non-Indian adoptive parents.

B. Who May Be Adopted. The following persons may be adopted under this Ordinance:

1. A minor who is subject to the jurisdiction of the Court;
2. An adult whose parents are both dead and who is subject to the jurisdiction of the Court; and
3. An adult whose parent is dead, who is being adopted by his/her stepparent, and who is subject to the jurisdiction of the Court.

C. 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:

1. The full name, residence, place of birth, date and sex of the minor, with attached documentary proof of the date and place of the birth of the minor to be adopted;
2. Documentary proof of the minor's membership status in the Tribe, if such proof exists;
3. The full name, residence, date and place of birth, occupation of the adoptive parent(s), statement of relationship to the minor, and documentary proof of marital status; provided, however, that nothing in this section shall not be interpreted to prohibit single parent adoptions,

tribal membership, or Indian status;

4. Proof of parental consent to the adoption where the petitioners are relatives of the minor by blood or marriage, except where the natural parents have abandoned the minor and cannot be located or where there is proof of a court order terminating parental rights of the parents to said minor;
5. An agreement by the adopting parent of the desire that a relationship of parent and child be established between them and the minor;
6. A full description and statement of value of all property owned, possessed, or held in trust by and for the minor;
7. A citation to the specific section of this Ordinance giving the Court jurisdiction of the proceedings; and
8. A brief and concise statement of the facts that may aid the Court in its determination.

D. Investigative Report.

1. Role of Caseworker. The Caseworker shall prepare and present to the Court a report within sixty (60) days of the filing of a petition for adoption or a supplemental report as ordered by the Court as to the suitability of the minor 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 Caseworker shall contact appropriate agencies and individuals who have relevant knowledge and such contacts and relevant information shall be included in the report. The Caseworker shall make written recommendations on the proposed adoption.
2. Other Agencies; Individuals. The Court may also order other appropriate 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.
3. Copies. Copies of reports shall be served on petitioner at the same time they are presented to the Court.

E. Consent to Adoption.

1. When Required. Written consent to adoption is required of:

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

2. When Not Required. Written consent to adoption is not required if:

- a. The parent's rights have been involuntarily terminated;
- b. The parent has voluntarily terminated his/her parental rights; or
- c. The parent has been declared incompetent.

F. Procedure for Signing the Consent to Adopt. Written consents, where required by this Ordinance, 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 the 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.

G. 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 a showing based upon a preponderance of the evidence at a hearing before the Court that consent was obtained by fraud, duress, or coercion, or the best interests of the minor require the consent to adoption be voided.

H. Hearing on Adoption.

1. Purpose; Time Limit. A hearing shall be held within ninety (90) days of receipt of an adoption petition to determine if it is in the best interests of the minor to be placed with petitioner(s).
2. 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 at 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 at issue. The judge shall examine all persons appearing as to the suitability of the minor 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 minor will be promoted by the adoption. The Court shall also hear natural extended family members to decide whether the minor's legal relationship to the extended family should be terminated.

I. Order.

1. Granting the Petition. If the Court is satisfied that it is in the best interests of the minor to grant the petition, the Court may enter a final decree of adoption as follows:
 - a. In the case of a minor who has lived with the adoptive parent for more than one (1) year before the adoption petition was filed, the final decree of adoption shall be entered immediately; or
 - b. In all other cases, the Court shall order that the minor be placed in the legal custody of the adoptive parent for at least one (1) year after which, the Court shall request a supplemental report, and if the Court determines that the best interests of the minor are served, shall enter the final decree of adoption immediately.
2. Contents of Adoption Order. The final order of adoption shall include such

facts necessary to establish that the minor is eligible and suitable for adoption, and that the adoptive home and parents are adequate and capable of providing the proper care of the minor, as shown by the investigation reports and the findings of the Court upon the evidence produced at the hearings.

3. Denying the Petition. The adoption petition shall be denied if it will not be in the best interests of the minor. The Court may request the Department or other agencies authorized to provide such services to assist in the placement and care of the minor. Where the Court finds the best interests of the minor will not be served by the adoption, a guardian shall be appointed and suitable arrangements made for the care of the minor in accordance with the applicable provisions of this Ordinance.

J. Adoption Records.

1. Confidentiality. All records, reports, proceedings, and orders are confidential, permanent records of the Court. Such records, reports, and orders shall be sealed and shall not be available for release for inspection by the public, except by order of the Court.
2. 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:
 - a. 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 circulation without revealing the name of the biological parent; and
 - b. The biological parent has consented in writing before the Court to release information or 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.

- K. Adoptive Birth Certificates; 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 Department of Health of the State that issued the original certificate of birth shall be notified by the Clerk of the Court that the adoption has taken place, giving the full name, sex, birthday, and names of natural parents in order to permit that a new record of birth in the new name and with the name or names of the adopting parents be recorded. Said Division of Vital Statistics of the State Department of Health shall be provided with a certified copy of the final decree of adoption.

- L. Name of Legal Status of Adopted Child. Minors 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 minor, as a group, except by order of the Court.

CHAPTER 6. TRANSFER OF JURISDICTION

Section:

_____	.1.6.010	Policy
_____	.1.6.020	State Notification; Process for Responding
_____	.1.6.030	Procedure for Transfer of Jurisdiction
_____	.1.6.040	Requesting Transfer of Jurisdiction
_____	.1.6.050	Procedure Upon Acceptance of Transfer of Jurisdiction
_____	.1.6.060	Petition for Transfer of Jurisdiction by Party Other Than the Tribe

_____ **.1.6.010 Policy.** It shall be the policy of the Tribe to request transfer of child custody proceedings taking place in state court under the ICWA involving the Tribe's children, except when good cause exists to the contrary. Accordingly, the Court shall determine a minor's ICWA eligibility on a case-by-case basis.

_____ **.1.6.020 State Notification; Process for Responding.** ICWA requires that a state notify the Tribe any time its "Indian child," as that term is defined by ICWA, is the subject of a

child custody proceeding, including an involuntary proceeding, a voluntary proceeding that could prohibit the parent or Indian custodian from regaining custody of the Indian child upon demand, and a proceeding involving status offenses if any part of the proceeding results in the need for out-of-home placement of the child, including a foster-care, pre-adoptive or adoptive placement, or termination of parental rights. In such cases, the designated recipient of state notification is the Tribe's tribal administrator, unless otherwise designated by the Business Council. Upon receipt of the state notification, the tribal administrator or other designated person shall initiate the procedures for determining whether the Tribe should become a participant in the state court proceeding or, alternatively, to pursue a transfer of the case to the Court pursuant to this this chapter.

_____. **.1.6.030 Procedure for Transfer of Jurisdiction.** This Ordinance contemplates that the following procedure will be followed in transferring jurisdiction of child custody proceedings from state court to the Court: (1) a decision by the Tribe to request transfer; (2) a petition to the state court requesting transfer pursuant to the ICWA; (3) a petition for acceptance of jurisdiction by the Court; (4) and acceptance of jurisdiction of the state court proceeding by the Court. If a question exists as to whether the Court will accept jurisdiction of a particular child custody proceeding, the Tribe may request an advisory opinion from the Court prior to petitioning the state court for transfer of jurisdiction as set forth below.

- A. Assessment of Case by Department Recommendation. Upon receipt of notice of a child custody proceeding governed by the ICWA in state court, or upon receiving notice in any other form that an Indian child of the Tribe is involved in a child custody proceeding as defined by the ICWA before a state court, the Department shall prepare an assessment of the minor and family's situation, and shall make a written recommendation as to whether the case should be transferred from state court to the jurisdiction of the Court. This assessment shall be prepared within twenty (20) days of receiving notice that the Indian child is involved in a state court ICWA proceeding.

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

- C. Committee to Review Recommendation and Determine Whether or Not to Request Transfer. The recommendation of the Department shall be reviewed by the ICWA Transfer Committee. The ICWA Transfer Committee shall be composed of the Department director, tribal attorney, tribal secretary, and tribal administrator who shall decide by majority vote whether a request shall be made to transfer jurisdiction of the proceeding to the Court. The ICWA Transfer Committee shall have the sole authority to determine whether or not the Tribe will request transfer of jurisdiction to the Court in a particular case. The ICWA Transfer Committee's decision in each case shall be reduced to writing and signed by all four (4) Committee members, and shall be the Tribe's request or denial. The Committee may reconsider its decision not to request a transfer at any time new information is obtained, or if circumstances change. The Committee may request transfer of a proceeding for payment purposes only.

.1.6.040 Requesting Transfer of Jurisdiction.

- A. Petition for Jurisdiction to State Court. After a vote by the ICWA Transfer Committee, the Tribe shall caused to be prepared a petition for transfer of jurisdiction and shall present such petition to the state court having jurisdiction over the Indian child in question. The petition shall be presented by the Tribe's legal counsel or the Department. The petition for transfer shall state that, upon granting the petition for transfer, the Tribe shall petition the Court for acceptance of jurisdiction, and tribal jurisdiction shall be accepted unless affirmatively declined by order of the Court.
- B. Petition for Acceptance of Court Jurisdiction. Concurrently upon petitioning the state court for transfer of jurisdiction of a child custody proceeding, the Tribe shall petition the 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 Court shall enter an order accepting transfer of jurisdiction and an order directed to the state court to transfer its files to the Court.
- C. Notice to the Standing of Other Parties. The 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 hearing on the petition for acceptance of transfer of

jurisdiction and a brief explanation of the subject of the hearing.

- D. Conditions Upon Acceptance of Transfer of Jurisdiction. The 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 the Indian child's dependency or neglect are beyond the Court's subpoena and jurisdictional authority, the Court may conditionally transfer the state case upon the state court's willingness to enforce tribal subpoenas and order state employees to testify in the subsequent Court proceeding. If the conditions are imposed, the Court acceptance of jurisdiction order shall be presented to the state court that originally transferred jurisdiction for its review and reaffirmation.
- E. Declination of Jurisdiction. The 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 minor, Tribe, or family. In making its determination, the Court may examine, but not be limited by, the following factors:
1. Emotional, cultural and family ties of the minor and family;
 2. Should adjudication be necessary, the ability of necessary witnesses to appear in the Court; and
 3. The ability of the Tribe to provide needed services, including, but not limited to, counseling, medical treatment, transportation.

_____. **.1.6.050 Procedure Upon Acceptance of Transfer of Jurisdiction.** Proceedings after accepting jurisdiction of a state court child custody proceeding involving an Indian child of the Tribe shall take place pursuant to the applicable sections of this Ordinance. Upon acceptance of jurisdiction, the 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 minor 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 Ordinance.

_____. **.1.6.060 Petition for Transfer of Jurisdiction by Party Other Than the Tribe.**

- A. Party to File Petition. If the parent or custodian of the Indian child, or the minor, through the guardian ad litem, petitions a state court in a child custody proceeding

involving an Indian child of the Tribe for transfer of jurisdiction to the Court, such transfer shall not be effective until acceptance by the 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 Court in the form prescribed by the Court.

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

- C. 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 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 that transferred jurisdiction of the proceeding.

CHAPTER 7. ESTABLISHMENT OF PARENTAGE AND SUPPORT

Section:

_____	.1.7.010	Jurisdiction Over Child Support Proceedings
_____	.1.7.020	Establishing Parentage
_____	.1.7.030	Rights of a Minor Once Parentage Is Established
_____	.1.7.040	Proceedings to Establish Parentage and Compel Support
_____	.1.7.050	Minor's Right to Support
_____	.1.7.060	Child Support Orders and Judgments from Foreign Jurisdictions

_____ 1.7.010 Jurisdiction Over Child Support Proceedings.

- A. The Court shall have personal and subject matter jurisdiction over the establishment, modification, and enforcement of child support and any associated

proceeding related to the purpose for which this Ordinance is established.

- B. The Court has, but is not limited to, personal jurisdiction over the following for purposes of enforcing the provisions of this chapter and any associated matters:
1. Enrolled members of the Tribe;
 2. Persons who consent to the jurisdiction of the Court by one of the following:
 - a. Filing an action;
 - b. Knowingly and voluntarily giving written consent to the jurisdiction of the Court;
 - c. Entering a notice of appearance in an action without concurrently filing an express written reservation of issues concerning personal jurisdiction or filing a motion to dismiss for lack of jurisdiction within thirty (30) days of entering the notice of appearance; and/or
 - d. Appearing in an action without concurrently filing an express written reservation of issues concerning personal jurisdiction or filing within thirty (30) days of such appearance a motion to dismiss for lack of jurisdiction.
 3. Persons who are the parent or guardian of an enrolled tribal member or the parent or guardian of a minor who is eligible for enrollment with the Tribe;
 4. Persons who have legally enforceable rights in any jurisdiction to visitation or custody of one of the Tribe's children that is in any way a subject of the proceeding and the minor is an enrolled member of the Tribe or eligible for enrollment with the Tribe; and
 5. Persons who are parties to child custody proceedings that are transferred from state court once the Court accepts jurisdiction, but only for the purpose of establishing, terminating, or modifying support orders for the support and maintenance of the Tribe's children involved in the proceeding.

_____ **.1.7.020 Establishing Parentage.** The parentage of a minor may be established by:

- A. A written acknowledgement by a parent that he is the father of or she is the mother of the minor that is filed with the Court; or
- B. A judicial determination by the Court.

_____ **.1.7.030 Rights of a Minor Once Parentage Is Established.** After the parentage of a minor is established, the minor has the same rights of inheritance from the person who is established as a parent that a minor born as a result of a lawful marriage has under tribal law.

_____ **.1.7.040 Proceedings to Establish Parentage and Compel Support.**

A. When and by Whom Proceedings May be Filed.

- 1. Proceedings may be started before the birth of the minor, but, unless the alleged father consents, trial will not be held until at least fifteen (15) days after the birth of the minor.
- 2. Proceedings to establish parentage may be brought in Court at any time before the minor is eighteen (18) years of age by: a parent; if the complainant parent dies or becomes disabled, the minor acting through a guardian or custodian; or the Tribe; and
- 3. Proceedings to compel support from a parent may be brought in Court at any time until a minor reaches the age of eighteen (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 minor's custodian.

B. Form of Petition; Summons; Procedures.

- 1. The petition shall be in the form approved by the 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;

2. Summons shall be issued and served as in other actions under this Ordinance; and

3. Procedure shall be the same as in other Court actions.

C. Judgment. The Court shall enter its order determining the minor's parentage and support, if any, at the conclusion of the adjudicatory hearing.

_____ .1.7.050 Minor's Right to Support.

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

B. Whenever the Court finds its necessary to place a minor in the custody of the Department or with another designated person, agency, department, institution, or facility, the Court may order that the parent, guardian, or custodian pay a monthly sum imposed by the Court toward such care and maintenance of the minor. The amount of such sum shall be determined by the Court based upon the person's ability to pay and any guidelines established under the Tribe's law or by the Department for child support.

C. If the parent, guardian, or custodian willfully fails or refuses to pay such sum, the Court may issue and order for payment which shall have the effect of a civil judgment for amounts due and/or refer the matter for enforcement of child support through appropriate tribal or state agencies. The Court may also issue an order for payment upon the failure of a parent, guardian, or custodian to comply with a child support order from a foreign jurisdiction when that order is enforced by the Court. The Court shall allocate the distribution of sums collected and such allocation shall include distributions required by any agreement governing foster care maintenance payments between the Tribe and the applicable state or state agencies.

D. Whenever the Department has accepted custody of a minor under this chapter and is required to provide financial assistance for the support and maintenance of the minor, it shall, by operation of tribal law, be the assignee of any right to support of the minor from any other person including any sums that may have accrued up to the amount of assistance provided by the Department.

_____ **.1.7.060 Child Support Orders from Foreign Jurisdictions.**

- A. The Court, having assumed jurisdiction over a child custody proceeding from a foreign jurisdiction, may enforce, modify, or terminate any child support orders issued in the transferred proceeding.

- B. The Court may modify or terminate a child support order issued by another state or tribe if the Tribe has jurisdiction to make a child support order and the court of the other state or tribe no longer has continuing, exclusive jurisdiction of the child support order. A child support provision in a court order of another jurisdiction may be modified by the Court within any restrictions imposed by federal law.

CHAPTER 8. JUVENILE OFFENDER PROVISIONS

Section:

_____	.1.8.010	Taking a Minor Into Custody
_____	.1.8.020	Complaint
_____	.1.8.030	Warrants
_____	.1.8.040	Release of Minor From Custody
_____	.1.8.050	Delivery of Minor to Detention or Shelter Care
_____	.1.8.060	Standards for Detention and Shelter Care Facilities
_____	.1.8.070	Preliminary Inquiry
_____	.1.8.080	Place of Detention
_____	.1.8.090	Investigation and Recommendations by the Caseworker
_____	.1.8.100	Informal Adjustment Conference
_____	.1.8.110	Petition
_____	.1.8.120	Notice of Hearing
_____	.1.8.130	Summons
_____	.1.8.140	Hearing on a Petition (Adjudication)
_____	.1.8.150	Probation Revocation Hearing

_____ **.1.8.010 Taking a Minor Into Custody.** Law enforcement officers may take a minor into custody if:

- A. The officer has probable cause to believe a delinquent act has been committed in his/her presence and that the minor has committed the delinquent act; or

- B. A warrant pursuant to this Ordinance has been issued for the minor; or

- C. The officer has reasonable suspicion to believe a minor who is subject to the Court's jurisdiction is leaving the jurisdiction of the Court.

_____.**1.8.020 Complaint.**

- A. Review and Signature on Complaint. The presenting officer shall review complaints.
- B. Complaint Form and Content. The form of the complaint shall be the form authorized pursuant to the Rules of the Court.

The complaint shall state:

1. The specific sections which give the Court jurisdiction;
2. The provision which is alleged to have been violated;
3. The name, age, and address of the minor who is subject to the complaint;
4. Any parties to the allegations;
5. The facts upon which the allegations are based, including the date, time, and location at which the alleged facts occurred; and
6. If the minor is in detention or shelter care, the time, and date placed in such care and reasons therefor.

_____.**1.8.030 Warrants.** Warrants shall be issued in accordance with the Rules of the Court.

_____.**1.8.040 Release of Minor From Custody.**

- A. Law Enforcement Officer. A law enforcement officer taking a minor into custody shall:
1. Give warnings and an explanation of due process rights required by this Ordinance or the Rules of the Court to any minor taken into custody prior to any questioning; and

2. Release, immediately, the minor to the parent, guardian, or custodian and issue a verbal counsel or warning as may be appropriate; or
3. Deliver, immediately, the minor to the Caseworker, detention, or shelter care as designated by the Court, or a medical facility if the minor is believed to be in need of 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.

B. 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:

1. Immediately notify the parent, guardian, or custodian notwithstanding the fact that custody was taken during the weekend or holidays;
2. Release the minor to the parent, guardian, or custodian unless detention or shelter care is appropriate pursuant to this section; and
3. In all cases, the minor shall be released to the parent, guardian, or custodian within seventy-two (72) hours of the time taken into custody unless the Court issues an order requiring that the custody continue.

C. Exception. A minor may not be released if:

1. A court order forbids release until further order of the court; or
2. It appears the minor is in immediate danger of physical harm; or
3. Reasonable suspicion exists to believe that the minor will run away from the Tribe's Reservation.

_____1.8.050 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 the section of this Ordinance pertaining to Minor in Need of Care arise, the minor shall be delivered to a place of detention or shelter care designated by the Court, and

the Caseworker shall immediately make arrangements for the temporary care and custody of the minor.

_____ .1.8.060 Standards for Detention and Shelter Care Facilities.

- A. Rules and Regulations. The Business Council shall adopt written rules and regulations governing the operation of detention and shelter care facilities.
- B. Content of Rules and Regulations. The rules and regulations shall include, but are not limited to, the following items:
 - 1. Cleanliness standards;
 - 2. Heat, water and lights standards;
 - 3. Personnel standards;
 - 4. Visiting privileges;
 - 5. Occupancy standards;
 - 6. Provisions for medical and dental care; and
 - 7. Provisions for food, clothing, and other personal items.

_____ .1.8.070 Preliminary Inquiry.

- A. Purpose. The purpose of a preliminary inquiry is to determine the best interest of the minor and the Tribe regarding any action to be taken. In determining 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.
- B. Time Limit.
 - 1. Minor in Custody. The preliminary inquiry shall be held within seventy-two (72) hours of the beginning of detention or shelter care.
 - 2. Minor Released from Custody. The preliminary inquiry shall be held

within three (3) days of release of the minor from detention or shelter care.

3. Minor Never in Custody. The preliminary inquiry shall be held within ten (10) days of the filing of a complaint that is not dismissed.
- C. Presence of Minor's Parent, 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 that 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.
- D. 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.
- E. 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 remain in custody until further order of the Court.
- F. 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 minor and:
 1. The act is serious enough to warrant continued detention or shelter care; or
 2. There is reasonable suspicion to believe the minor will run away so that he or she will be unavailable for further proceedings; or
 3. There is reasonable suspicion to believe that the minor will commit a serious act causing damage to a person or property; or
 4. There is reason to believe the minor cannot be controlled by his/her parent, guardian, or custodian.

G. 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 Ordinance. If the minor wishes to admit he or she committed the alleged act, the Court must first determine that:

1. The minor has a full understanding of his/her rights under this Ordinance;
2. The minor has full understanding of the consequences of admitting that he/she committed the alleged act; and
3. The minor has not stated any facts that would be a defense.

H. Whether a Minor Understands Rights or Consequences of Admission or Has Stated a Defense. If the Court determines the minor does not understand his/her rights, the consequences of admitting committing the alleged act or the minor has stated a defense, the Court shall order the case to proceed as a Minor in Need of Care. If the Court determines the minor understands his/her 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 Ordinance.

.1.8.080 Place of Detention.

A. Place of Detention. A minor alleged to be a juvenile offender may be detained, pending a Court hearing, in the following places:

1. A foster care facility licensed or approved by the Department; or
2. A detention facility approved by the Department; or
3. A private family home on the Reservation approved by the Department; or
4. A facility outside the Reservation that has been approved either by the state in which it is located or the Department.

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

1. He/she is charged with an offense which would subject him/her to jail sentence if he/she were an adult;

2. A facility in the preceding subsection regarding place of detention is not available or would not assure adequate supervision of the minor;
3. 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
4. Adequate supervision is provided twenty-four (24) hours a day, and the minor is checked in person at least every fifteen (15) minutes.

_____.1.8.090 Investigation and Recommendations by the Caseworker.

- A. Investigation. The Caseworker shall investigate within forty-eight (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.
- B. Recommendation. Upon completion of the investigation, the Caseworker may recommend to the presenting officer that: no further action be taken; an informal adjustment hearing be set; a petition be filed; or a transfer petition be filed.
- C. Failure to Investigate. Failure to make the investigation shall not be grounds for dismissal of proceedings against the minor.

_____.1.8.100 Informal Adjustment Conference.

- A. 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:
 1. The admitted facts bring the case within the jurisdiction of the Court;
 2. An informal adjustment of the matter would be in the best interest of the minor and the Tribe; and
 3. The minor and parent, guardian, custodian, spokesperson, or legal representative for the minor consent to an informal adjustment with knowledge that the consent is voluntary.

B. Alternatives. As a result of the informal adjustment conference, the presenting officer may:

1. Refer the minor and parent, guardian, or custodian to a community agency for needed assistance;
2. 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 that are within the ability of the minor to perform;
3. Accept an offer of restitution voluntarily made by the minor; or
4. File a petition pursuant to this Ordinance if it appears no other alternative will be in the best interests of the minor and the Tribe.

C. Written Agreement to Informal Adjustment.

1. Consent. 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.
2. Time Limit. An informal adjustment period shall not exceed six (6) months, except by order of the Court.
3. Review. The Caseworker shall review minor's progress every thirty (30) days. If, at any time after initial thirty (30) day period, but before the end of the six (6) months, the Caseworker concludes the agreement is not being followed, the Caseworker shall recommend to the presenting officer to file a petition pursuant to this Ordinance.
4. 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. The presenting officer at the beginning of the conference shall tell all parties to the informal adjustment conference that he/she has the authority to accept or reject any agreement the parties reach.

5. Notice of Informal Adjustment Agreement to the Court. The presenting officer shall file a copy of the informal adjustment agreement with the Court.
6. 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.

D. 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.

_____. **.1.8.110 Petition.** The petition shall be prepared as required by this Ordinance and filed within three (3) days after it is determined or recommended that a petition should be filed.

_____. **.1.8.120 Notice of Hearing.** Notice of a hearing shall be given to all parties as required by the Rules of the Court.

_____. **.1.8.130 Summons.** Summons shall be issued and served as required by the Rules of the Court.

_____. **.1.8.140 Hearing on a Petition (Adjudication).**

- A. Purpose. The Court shall conduct the hearing for the primary purpose of determining if a minor committed the alleged illegal act.
- B. Time Limit. A hearing on the petition shall be held within ten (10) days after the petition is filed.
- C. Plea. If the minor wishes to admit that he/she committed the alleged act, the Court shall proceed as required in the section of this Ordinance pertaining to a "Plea and Disposition" during a "Preliminary Inquiry".
- D. 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 the section of this Ordinance pertaining to "Disposition and Placement Provisions"

and "Disposition of a Juvenile Offender".

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

_____.**.1.8.150 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 proceeding.

CHAPTER 9. MISCELLANEOUS PROVISIONS

Section:

_____	.1.9.010	Compulsory School Attendance
_____	.1.9.020	Emancipation
_____	.1.9.030	Appeal
_____	.1.9.040	Full Faith and Credit

_____.**.1.9.010 Compulsory School Attendance**.

A. Compulsory School Attendance; Responsibility. Any person who, because of age, is eligible to become a qualified student, as defined by California 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:

1. The person is specifically exempted by law from the provisions of this section;
2. The person has graduated from a high school;
3. The person is at least fourteen (14) years of age and has been excused by 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;
4. 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

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

B. 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.

C. 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.

D. Certificates of Employment.

1. 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.

2. Contents of Certificate. The certificate of employment shall contain the following information:

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

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

E. Enforcement of Attendance Law/Penalty.

1. Responsibility for Enforcement. Each local school board and each governing authority of a private school shall initiate the enforcement of the provisions of this Compulsory School Attendance section for students enrolled in their respective schools.
2. 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 Court and shall be considered to be a neglected minor or a minor in need of supervision and thus subject to the provisions of this Ordinance.
3. Failure to Enforce. Any person failing his/her responsibility for initiating enforcement of the subsection regarding "Procedure" of this section is guilty of neglect.
4. Neglect by Parent, Guardian, or Custodian. After receiving notice (pursuant to the subsection regarding "Procedure" of this section), 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.

- F. 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.

_____.1.9.020 **Emancipation.**

A. Requirements. The Court may declare a minor emancipated either pursuant to a petition or as a dispositional alternative if the minor:

1. Wishes to be free from parental control and protection and no longer needs that control and protection; or
2. Is a Minor in Need of Care or delinquent minor as defined by this Ordinance and all of the requirements for emancipation exist.

B. Requirement for Emancipation. Before a minor may be emancipated, he shall:

1. Be sixteen (16) years of age;
2. Be self-supporting;
3. Understand the consequences of being free from parental control and protection; and
4. Have an acceptable plan for independent living.

C. Procedure for Emancipation.

1. Petition. A minor may petition the Court for a declaration of full or partial emancipation. The petition shall be verified and shall state specific facts that will support a declaration of emancipation.
2. Notice. Before the petition is heard, notice shall be given to the minor's parent(s), guardian, or custodian as required by this Ordinance.
3. Findings. If the Court finds that the requirements of this 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 minor.
4. Declaration. If the Court grants all or part of the petition, it shall immediately issue a declaration of emancipation.

D. Purpose for Emancipation. An emancipated minor shall be considered an adult

over the age of eighteen (18) for all purposes except that he/she shall remain subject to the laws requiring compulsory school attendance and to the continuing jurisdiction of the Court.

_____ .1.9.030 Appeal.

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

- B. **Stay Pending Appeal.** Unless the Court stays its order, the pendency of an appeal shall not stay the order or judgment appealed from in a minor's case. Where the order or decree appealed from directs a change of legal custody of a minor, the appeal shall be heard and decided at the earliest practical time. The name of the minor shall not appear on the record on appeal.

_____ .1.9.040 Full Faith and Credit. The Court shall give full faith and credit to state and tribal custody orders where the state and tribe reciprocate in giving full faith and credit to orders of the Court, and where such orders are consistent with the public policy of the Tribe, the intent of the ICWA, and the laws and customs of the Tribe.

Section 3. Severability. In the event that any section or provision of this Ordinance is held or determined to be invalid by any court of competent jurisdiction, it is the intent of the Business Council that the remaining sections or provisions of this Ordinance, and any amendments of this Ordinance, shall continue in full force and effect.

Section 4. Amendments. This Ordinance may be amended at any time by the Business Council, when such amendment is necessary to promote the general health, safety, and welfare of the Tribe or its members. The Business Council expressly reserves the right to amend this Ordinance subject to the approval of this Ordinance by the Secretary of the Interior, if applicable federal law so requires it.

Section 5. Repeal of Prior Inconsistent Ordinances and Codes. All prior ordinances previously enacted by the Business Council that are inconsistent with the provisions of this Ordinance are hereby repealed. If the provisions of this Ordinance conflict with the provisions of any other ordinance, the provisions of this Ordinance shall control.

Section 6. Effective Date. This Ordinance shall take effect immediately after its adoption by the Business Council and its approval by the Secretary of the Interior, if applicable federal law so requires it.

CERTIFICATION

The foregoing ordinance was adopted at a regular meeting of the Business Council of the Blue Lake Rancheria held on May 2, 2018, by the following vote:

AYES: 4
NOES: 0
ABSTAIN: 0
ABSENT: 1

Claudia Brundin
CLAUDIA BRUNDIN, CHAIRPERSON

5-2-18
DATE OF APPROVAL

ATTESTED TO:

Leslie Albright
Leslie Albright, Tribal Executive Secretary

5-2-18
DATE OF APPROVAL