

YUROK TRIBE CHILDREN'S CODE

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

SECTION 5001: PURPOSE

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

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

SECTION 5002: JURISDICTION

The jurisdiction of the Yurok Tribal Court and the effective scope of this Ordinance shall minimally include, but not necessarily be limited to: all Yurok

Tribal members, both present and future, any children of a Yurok Tribal member, all territory within the Yurok Indian Reservation, as defined by Article 1 of the Yurok Tribal Constitution, including but not necessarily limited to, all real property including fee patents, allotments, assignments; all roads, waters, and bridges used or maintained for Tribal purposes, and existing and future lands outside the boundaries of the currently federally recognized Reservation owned or controlled by the Yurok Tribe for the benefit of its members.

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

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

SECTION 5003: DEFINITIONS

(a) Abandonment of Child/Infant

The term "abandonment" includes when a parent or caretaker has shown conscious disregard of parental responsibilities toward the child by failing to provide reasonable support, maintain regular contact, or provide normal supervision, considering the child's age and needs. Abandonment of a child also includes instances when the parent or caretaker unjustifiably:

1. Leaves the child with another person without provision for the child's support and without meaningful communication with the child for a period of three (3) months;
2. Intentionally leaves the child without affording means of identifying the child and the child's parent or caretaker;
3. Is absent from the home for a period of time that creates a substantial risk of serious harm to a child left in the home;
4. In the case of a non-custodial parent:
 - (A) makes only minimal efforts to support and communicate with the child;
 - (B) fails to maintain regular visitation with the child for a period of six (6) months;

(C) fails to participate in a suitable plan or program designed to reunite the parent with the child;

5. Failed to respond to notice of child protection proceedings;
6. The Tribe adopts the concept of California's Abandoned Infant provisions in that specifically said "abandonments of a Yurok Infant by a Yurok parent" may take place by bringing the infant to the offices of Yurok Social Services, Yurok Public Safety and/or the Yurok Tribal Court. The infant will be conveyed to YSS for immediate care and detention consistent with the infant's needs.

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

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

A finding of abandonment requires that the parent/guardian/caretaker/Indian custodian has been given notice and opportunity to redress the abandonment and is found to be or states they are unwilling or unable to redress the problem and seeks the intervention of the court to insure the welfare of the child. If the court makes the finding of abandonment then the court will establish a parental figure and/or placement plan for the child.

(b) Abandoned Infant

An abandoned infant is an infant 72 hours of age or younger whose parent gives up control of the infant by an act coupled with an intention to knowingly relinquish such control and does not re-claim the infant within 14 calendar days. The knowing intention to relinquish control may be demonstrated by the actions or failures to act delineated in Section 5003(a)(1-6) above.

(c) Adoption

Adoption means the method provided by law (of another jurisdiction recognized by Yurok) which establishes the legal relationship between persons who are not

so related by birth, with the same mutual rights and obligations that exist between children and their birth parents. This relationship can only be termed “adoption” after the legal process is complete. An adoption of another jurisdiction will be recognized by the Yurok tribe so long as the laws of that jurisdiction have been followed. However, no adoption of a Yurok child shall occur in this court unless and until the birth parent(s) of said child have consented to said adoption. If said birth parents are not available to consent by reason of their death or incompetence or a reasonable and diligent search does not result in the location of such parent the court may consider a request for termination of parental rights and adoption accompanied by an affidavit or testimony that the surviving/remaining family of the parent(s) support the termination of parental rights and adoption of the minor child by the applicant.

(d) Advisor to Tribal Court

The parent(s)/guardian/custodian/caretaker may nominate a member of their family or an elder or other person known to them to act as an advisor to the court or the court may nominate a person to serve this role for the family. The advisor’s role is not designed to replace a parent’s advocate but is to help the court reach a disposition in each case that is consistent with the purposes of this code to protect Yurok children’s right to an upbringing consistent with Yurok cultural imperatives and the rights of each Yurok child to a loving and protected upbringing. For that purpose the advisor is allowed to address the court with a non-binding recommendation or, with the permission of the parties, address the court in chambers in an unreported hearing for the purposes of making non binding recommendations.

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

(e) Aggravated Circumstances

Aggravated circumstances means serious abuses of parental responsibility as set forth in this code. Examples of Aggravated Circumstances would include but not necessarily be limited to: 1) abandonment, torture, chronic abuse, sexual abuse of a child, the custodial parent(s) is mentally impaired to the extent they can not adequately care for the child, or abandonment of an infant; 2) the parent previously had parental rights involuntarily terminated to a sibling of the current child in custody; 3) the parent had committed or aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; or 4) the parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent.

(f) Caretaker

Any person with the responsibility of caring for or safeguarding any child and is

recognized by the child's family and/or community as having such responsibilities.

(g) CASA

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

(h) CINA

The court may find a child to be a Child In Need of Aid, as result of actions taken which are contrary to the child's welfare, ("CINA"), if it finds by a preponderance of the evidence that the child has been subjected to conditions which inflict upon the child or place the child in danger of physical, mental, or emotional harm, including:

1. The parent/guardian/caretaker or custodian has abandoned the child, and the other parent is absent or has committed conduct or created conditions that cause the child to be a CINA under this Subchapter;
2. The child has been neglected as described,
3. The child has suffered medical neglect,
4. The child is a habitual runaway,
5. The child has suffered physical abuse, or there is substantial risk that the child will suffer physical abuse,
6. The child has suffered sexual abuse, or there is substantial risk that the child will suffer sexual abuse;
7. The child has suffered emotional damage or mental injury, or there is substantial risk that the child will suffer emotional damage or mental injury;
8. The parent or custodian's ability to parent has been substantially impaired by the addictive or habitual use of an intoxicant, or the addictive or habitual use of an intoxicant has resulted in a substantial risk of harm to the child; and
9. The parent or custodian has a mental illness, serious emotional disturbance, serious physical disability, or mental deficiency of a nature and duration that places the child at substantial risk of harm.

(i) Concurrent Jurisdiction

This Court may assume concurrent jurisdiction with any non-Yurok court upon a specific request by YSS that sets forth a specific case plan and terms of said request. This Court may also pursuant to a request from YSS concurrently work with any Wellness Court requirements, and or allow the provisions of any YSS case plan to be adopted as Wellness Court requirements. Information sharing to carry out the objectives of concurrent jurisdiction are anticipated and hereby allowed.

(j) Date the Child Entered Foster Care

The date the child entered foster care is the earlier of the first judicial finding of child abuse or neglect (the jurisdiction finding) or 60 days after the child is physically removed from the home of the parent, guardian or caretaker. [42 U.S.C. § 675(5)(F)].

(k) Delinquent Child

1. A child who has previously been adjudicated a delinquent by a non-Yurok court of competent jurisdiction or who has been adjudicated a delinquent pursuant to any delinquency code enacted by this tribe.
2. A child who has been found in a Court or other appropriate proceeding, to have committed repeated delinquent acts, and whose parent or custodian is unable or unwilling to control such behavior.

(l) Dependent Child

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

(m) Extended Family or Relative

Extended family or relative means a tribal member who has reached the age of eighteen and who is the minor’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent, or is recognized by traditional village custom and/or practice as an extended family member.

(n) Indian Custodian

Indian person who has custody of an Indian child but is not that child’s biological parent, who has the right and responsibility to make decisions about a child’s day-to-day care, well being, and overall best interests, and has special rights under the Indian Child Welfare Act.

(o) Legal Guardianship

A judicially-created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The term *legal guardian* means the caretaker in such a relationship.

(p) Protective Parent

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

A protective parent may be appointed with or without the consent of the identity parent. A Protective Parent is established by the method provided by law of this Code (or by law of another jurisdiction recognized by Yurok) which establishes the legal relationship between persons who are not so related by birth, with the same mutual rights and obligations that exist between children and their birth parents. This relationship can only be termed “protective parent” after the legal process is complete.

The Yurok Protective Parent concept precedes the State of California’s Tribal Customary Adoption statute and is consistent with that statute and this concept is not intended nor does it preclude a Tribal Customary Adoption recommendation by this Court to allow such an adoption in a non-Yurok Court.

(q) Relative

See Extended Family or Relative.

(r) Voluntary Placement Agreement

A written agreement binding on YSS and any parent, guardian, or caretaker which:

- 1. Specifies the legal status of the child and the rights and obligations of the parent(s), guardian(s) or caretaker(s); the child; and YSS while the child is in out-of-home placement;**
- 2. Is requested by the parent(s), guardian(s) or caretaker(s);**
- 3. Is signed by all parties including YSS;**
- 4. May be revoked if the parent(s), guardian(s) or caretaker(s) request that the child be returned home or to the home of a specified relative unless YSS opposes such request and obtains a judicial determination that the return of the child to such home would be contrary to the child’s best interests.**

(s) Voluntary Services

with the agreement of YSS, a Yurok parent or other person, who this Court has jurisdiction over pursuant to this Code, may seek the assistance of YSS and enter into a voluntary service plan pursuant to the provisions of this Code.

(t) Withholding of Medically Indicated Treatment

Yurok Tribe Children’s Code
Adopted _____

The term “withholding medically indicated treatment” includes where a parent or other caretaker fails to respond to a child’s life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician’s or physicians’ reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to a child when, in the treating physician’s or physicians’ reasonable medical judgment—

1. the child is chronically and irreversibly comatose;
2. the provision of such treatment would--
 - (A) merely prolong dying;
 - (B) not be effective in ameliorating or correcting all of the child’s life threatening conditions; or
 - (C) otherwise be futile in terms of the survival of the child; or
3. the provision of such treatment would be virtually futile in terms of the survival of the child and the treatment itself under such circumstances would be inhumane.

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

(u) Yurok Child

Any minor that has not yet attained 18 years of age who is the child of a present or deceased Yurok Tribal member including any adopted child of such a member. Enrollment or eligibility for enrollment is not a prerequisite for inclusion within this definition for the purposes of this code.

(v) YSS

The Department of Yurok Social Services

SECTION 5004: VOLUNTARY PETITION FOR SERVICES

(a) Authority:

The Department of Yurok Social Services (“YSS”) shall hold an informal conference with the minor’s parent(s), guardian or custodian to discuss alternatives to the filing of a petition if:

1. the alleged facts bring the case within the jurisdiction of the Court;

2. the informal resolution of the matter would be in the best interests of the minor and the Tribe; and

3. the minor and the minor's parent(s), guardian or custodian request services which will be provided through a case plan designed to resolve the presenting problems.

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

(b) Notice:

Notice of the informal conference shall be given to the minor and his parent(s), guardian(s) or custodian(s) and their counsel as soon as the time for the conference has been established. The notice shall contain a brief statement of the alleged circumstances upon which the CINA allegation is based.

(c) Disposition:

At the informal conference, YSS may:

1. refer the minor and the minor's parent(s), guardian or custodian to an available program or service provider for needed assistance;
2. arrange terms of supervision calculated to assist and benefit the minor, which regulate the minor's activities and which are within the ability of the minor to perform, including placement through a Voluntary Placement Agreement; or
3. recommend that the presenting officer file a petition for removal pursuant to Sections 5008 and 5010 of this Code.

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

Any informal voluntary service period shall not exceed a reasonable period of time, and must be consistent with the best wishes of the child.

Any voluntary placement in excess of 180 days may be authorized by a finding that the placement is in the best interests of the child, obtained prior to the 181st day of the child's placement.

(d) Revocation:

The parent can withdraw the request or terminate the placement agreement with a seven (7) day notice to YSS.

SECTION 5005: ABUSE

(a) Physical Abuse

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

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

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

(b) Sexual Abuse

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

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

1. Sexual intercourse, including sexual contact in the manner of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or of opposite sex; sexual contact means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person;
2. Bestiality;
3. Masturbation;
4. Lascivious exhibition of the genitals or pubic area of a person or animal; or
5. Sadistic or masochistic abuse;

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

(A) Knowingly permitting or encouraging a child to engage, in any way, in prostitution or live sexual performance, or to display his or her genitals for the sexual gratification of the parent, caretaker, or third person;

(B) Knowingly permitting or encouraging a child to engage, in any way, in the production of pornographic material, including the visual depiction of the child engaged in sexually explicit conduct, whether for commercial or personal purposes.

Sexual abuse may also be committed by a person under eighteen (18) years of age when that person is either three years or more older than the victim, when the victim is a mentally impaired child, or when the perpetrator is in a position of power or control over another child.

(c) Child Neglect

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

1. Fails to provide the child with adequate food, clothing, shelter, education, medical attention, supervision or other care necessary for the child’s physical, mental, emotional and spiritual health and development, though:

(A) the parent or caretaker is financially able to do so; or

(B) public assistance and service programs are reasonably available if the parent or caretaker is indigent;

2. Has abandoned the child; and

3. Has withheld medically indicated treatment, including traditional, cultural, and spiritual healing methods and options where appropriate.

4. Is intoxicated or under the influence of a legal or illegal substance which renders the parent or caretaker unable to meet the reasonable demands of the child for care.

5. Where the parent has been found to be manufacturing/cultivating any illicit drugs in the home or on the property where the home is located or on or property where the child might reasonably be assumed to have access to in the daily life of the child.

6. Failure to protect the child from the known company of a registered sex offender.

(d) Psychological Maltreatment

For the purposes of this chapter, the term “psychological maltreatment” includes where a parent or caretaker inflicts, causes another to inflict, or fails to make reasonable efforts to prevent the infliction of mental injury upon a child when the parent or caretaker knows or reasonably should know that the child was in danger of psychological maltreatment.

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

medical care and education. Symptoms of such abuse may be evidenced by an observable and substantial impairment in his or her ability to function within a normal range of performance and behavior, with due regard to his culture.

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

SECTION 5006: INVESTIGATION & REPORTS

(a) Receipt of reports of child maltreatment, investigation and written reports, and cross-notification.

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

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

2. Cross-notification of child maltreatment reports.

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

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

(2) actions which would reasonably be expected to result in abuse of a child within the territorial jurisdiction of the Tribe, the receiving agency shall immediately notify appropriate officials of the other agency of such report and shall also submit, when prepared, a copy of the written report required under subsection 3, to such agency.

(B) Where a report of abuse involves an Indian child or where the alleged abuser is an Indian and where a preliminary inquiry indicates a criminal violation has occurred, the local law enforcement agency, if other than the Federal Bureau of Investigation, shall immediately report such occurrence to the Federal Bureau of Investigation.

3. Written report of child maltreatment required.

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

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

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

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

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

(5) the name and address of the person who made the report to the agency consistent with confidentiality requirements as per Section 5006(a)4 below;

(6) a brief narrative as to the nature and extent of the child's injuries, including any previously known or suspected abuse of the child or the child's siblings and the suspected date of the abuse; and

(7) any other information the agency or the person who made the report to the agency believes to be important to the investigation and disposition of the alleged abuse.

(B) Receipt of Report

(1) (i) If Yurok Tribal Police or YSS receives a report alleging child maltreatment as described in the definitions section above, the YSS shall immediately initiate an investigation of such allegation and shall take immediate, appropriate steps to secure the safety and well-being of the child or children involved.

(ii) Yurok Tribal Police will assist in the investigation upon the request of YSS.

(iii) If a local law enforcement agency receives a report of known or suspected child abuse or neglect, it shall first attempt to contact YSS in order to refer the case for investigation. If the local law enforcement agency is unable to contact the department, it shall make a complete investigation and may institute appropriate legal proceedings on behalf of the subject child or other children under the same care.

(iv) The Tribal Law Enforcement Agency, upon receipt of a report and upon completion of any investigation it may undertake, shall immediately forward a summary of the investigatory data plus all relevant documents to YSS. If YSS is not available for immediate response, the law enforcement agency may take the child into protective custody if there appears to be an immediate threat to the child's well being pending an investigation by YSS.

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

4. Confidentiality of Informant.

The identity of any person making a report described in Section 5006(a)3 shall not be disclosed in the final report of YSS under Section 5006(a)3(B)(2) above, without the consent of the individual, to any person other than a court of competent jurisdiction or an employee of an Indian

tribe, a State or the Federal Government who needs to know the information in the performance of such employee's duties.

(b) Convening of multi-disciplinary team required for reports of known or suspected child sexual abuse or severe physical abuse, pursuant to the federal Crime Control Act of 1990, 18 U.S.C. §3509(g).

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

1. Medical diagnoses and evaluation services, including provision or interpretation of x-rays, laboratory tests, and related services, as needed, and documentation of findings;
2. Telephone consultation services in emergencies and in other situations;
3. Medical evaluations related to maltreatment;
4. Psychological and psychiatric diagnoses and evaluation services for the child, parent or parent, guardian or guardians, or other caregivers, or any other individual involved in a child victim or child witness case;
5. Expert medical, psychological, and related professional testimony;
6. Case service coordination and assistance, including the location of services available from public and private agencies in the community; and
7. Training services for judges, litigators, court officers and others that are involved in child victim and child witness cases, in handling child victims and child witnesses.

(c) Scope of Investigation and Written Report.

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

1. Attempt to contact and interview all relevant parties, including the parents and children, as well as, if appropriate, caretakers, relatives, extended family members, neighbors, teachers, and treatment personnel;
2. Attempt to visit the home and/or place where the child is residing;
3. Investigate and report on the child's current circumstances, including home environment, parental and family history, including criminal histories, parent's current circumstances, including financial information if relevant, the nature of the reported charges, and the information supporting or contravening those charges;
4. Determine if the child can remain safely in the home with services provided, and assist in providing those services;

5. Seek out relatives, extended family members, or others with whom the children are familiar, and with whom the children can be placed, if necessary, pending further investigation;

6. Make tentative conclusions as to what is in the best interests of the child, and how best to protect the child's health and safety until further investigation can be concluded; and

7. Information gained in the investigation shall be included in a written report and included with the Petition or presented and filed at the preliminary hearing.

(d) Mandate to develop, adopt and implement investigation protocols.

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

(e) Conclusions to be Included in Social Service Agency Reports Post Investigation

One of the following conclusions shall be included in a written social services agency report of an investigation of child maltreatment: 1. "Unfounded report" means a report which is determined by the investigator who conducted the investigation to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child maltreatment, as defined above; 2. "Substantiated report" means a report which is determined by the investigator who conducted the investigation, based upon some credible evidence, to constitute child maltreatment, as defined above; 3. "Inconclusive report" means a report which is determined by the investigator who conducted the investigation not to be unfounded, but in which the findings are inconclusive and there is insufficient evidence to determine whether child maltreatment, as defined above, has occurred.

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

(f) Outcome of Report of Child Maltreatment and Investigation.

Following the report of child maltreatment and investigation, the social services agency shall pursue one of the following courses of action:

1. Close the case if the agency determines that the child is not a CINA or at risk of becoming a CINA;

2. Keep the case open and offer family support services in order to alleviate the need for a CINA petition.

3. Keep the case open and offer to schedule a Family Group Conference to alleviate the need for a CINA petition.
4. File a CINA petition.
5. Institute a petition for voluntary services pursuant to Section 5004 of this Code.

SECTION 5007: PROTECTIVE ORDERS

(a) Removal of a Dangerous Individual from the Home Using a Protective Order

1. The tribal court may issue a written or oral emergency order for protection ex parte when a law enforcement officer, or other authorized tribal agent, states to the court, in person or by telephone, facts giving rise to a reasonable belief that the petitioner is in immediate danger of family violence.
2. The tribal court may grant an emergency order for protection to remove and exclude the respondent from the residence of the petitioner, regardless of ownership of the residence.

(b) Temporary Emergency Child Protection Restraining Order

1. Definitions

(A) "Family violence" means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense:

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

(B) "Family or household members" include:

- (1) Adults or minors who are current or former spouses;
- (2) Adults or minors who live together or who have lived together;
- (3) Adults or minors who are related by blood or adoption;
- (4) Adults or minors who are related or formerly related by marriage;
- (5) Persons who have a child in common; and
- (6) Minor child of a person in a relationship that is described in paragraphs (1) through (4).

2. Eligible Petitioners for Order

The following persons may file a petition for a temporary emergency child protection restraining order against a family or household member who commits an act of family violence:

- (A) A child who allegedly is or has been a victim of family violence;

(B) The parent, guardian, caretaker, or other representative of the alleged victim of family violence.

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

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

(A) The tribal court shall:

(1) Develop and adopt uniform forms for petitions and orders for temporary emergency child protection restraining orders; and

(2) Provide the forms to the clerk of the court authorized to issue such orders.

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

(1) A statement listing each civil or criminal action involving both respondent and petitioner;

(2) The statement, "Violation of this order is punishable by confinement in jail for as long as one (1) year and/or a fine not to exceed \$5,000";

(3) Any other information the tribal court deems necessary.

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

(1) The forms adopted pursuant to subsection (A);

(2) All other forms required to petition for a temporary emergency child protection restraining order, including but not limited to, forms for service and forms required by the Uniform Child Custody Jurisdiction Act; and

(3) Clerical assistance in filling out the forms and filing the petition.

4. Temporary Emergency Child Protection Restraining Order; Available Relief; Availability of Judge or Court Officer

(A) The tribal court may issue a written or oral emergency order for protection ex parte when a law enforcement officer, or other authorized tribal agent, states to the court, in person or by telephone, facts giving rise to a reasonable belief that the petitioner is in immediate danger of family violence.

(B) A law enforcement officer who receives an oral order of protection from a court shall:

(1) Write and sign the order on the form required pursuant to Section 5007(b)3;

(2) Serve a copy on the respondent;

(3) Immediately provide the petitioner with a copy of the order;

and

(4) Provide the order to the court by the end of the next judicial day.

(C) The court may grant the following relief in an emergency order for protection:

(1) Enjoin the respondent from threatening to commit or committing acts of domestic or family violence against the petitioner and any designated family or household member; or

(2) Prohibit the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly;

(3) Remove and exclude the respondent from the residence of the petitioner, regardless of ownership of the residence;

(4) Order the respondent to stay away from the residence, school, place of employment of the petitioner, or any specified place frequented by the petitioner and any designated family or household member; and

(5) Order such other relief as the court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member.

(D) A judge or other court officer with authority to issue a temporary child protection restraining order must be available 24 hours a day to hear such petitions.

5. Effect of Action by Petitioner or Respondent on Order

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

6. Court Costs and Fees

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

7. Penalty for Violation of a Temporary Child Protection Restraining Order

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

8. Temporary Child Protection Restraining Order Hearing

(A) A hearing to determine whether the petitioner-child is in immediate danger of family violence shall be held within three Court Days of the filing of a temporary emergency child protection restraining order with the tribal court. The three Court Day period excludes weekends and court holidays.

(B) The tribal court shall direct local law enforcement to notify both the petitioner and respondent as to the date, time, and location of the hearing at least 24 hours before the hearing is scheduled.

(C) Both petitioner and respondent must be present at the hearing.

(D) The hearing shall be informal in nature. Concerned parties may present evidence or testimony relating to the situation. Hearsay evidence will not be excluded so long as it is otherwise admissible. The general public shall be excluded from the proceedings. Only the parties, legal counsel, witnesses, the child's extended family, and other persons determined to be appropriate by the court shall be admitted.

(E) During the hearing, the court shall advise the parties of the reason for the hearing and of their basic rights as provided by this Statute.

(F) After hearing all the evidence presented, the tribal court shall make a finding as to whether the petitioner-child is in immediate danger of family violence.

(1) If the tribal court finds that the petitioner-child is not in immediate danger of family violence, the temporary emergency child protection restraining order shall be dismissed. The dismissal of the notice of removal shall not serve as a bar to further investigation of this matter by the tribe. The court shall order a family conference, as defined by this Statute, to help resolve the issues leading to the issuance of the temporary child protection restraining order.

(2) If the tribal court finds that the petitioner-child is in immediate danger of family violence, the temporary emergency child protection restraining order may be extended for up to three (3) years from the date of the hearing and shall be renewable for up to 20 years or otherwise modified to protect the child. The court shall order a family conference, as defined by this Statute, to help resolve the issues leading to the issuance of the temporary child protection restraining order.

SECTION 5008: REMOVAL OF CHILD

(a) Entity Responsible for Taking Emergency Custody of Children

YSS and the Yurok Tribe Department of Public Safety shall be designated to take a CINA into emergency custody under this Chapter.

(b) Taking a Child into Emergency Custody

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

(A) An emergency custody order has been issued by the court for the child following a hearing pursuant to this statute; and/or;

(B) He or she has reasonable grounds to believe that the child is a CINA and that one or more of the conditions that would make the child a CINA exist, or;

(C) The representative has reasonable grounds to believe the child has run away, or;

(D) The child requests to be placed in emergency custody.

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

(c) Notice of Removal to the Parent, Guardian or Custodian

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

2. Reasonable efforts shall include personal, telephone and written contacts at the parents, guardian's or custodian's residence, place of employment, or other

location where the parent, guardian or custodian is known to frequent with regularity.

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

(d) Notice of Removal to the Court

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

SECTION 5009: ACTIVE EFFORTS

(a) Active Efforts Required

YSS shall make active efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured; to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child); and to make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible.

- I. In determining active efforts to be made with respect to a child and in making such efforts, the child's health and safety shall be the paramount concern.
- II. When a child is removed from his/her home, a judicial determination as to whether active efforts were made, or were not required to prevent the removal, must be made no later than 60 days from the date the child is removed from the home. If the determination concerning active efforts to prevent the removal is not made within 60 days of removal, the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.
- III. Active efforts shall be made to preserve and reunify families—
 - A. prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and
 - B. to make it possible for a child to safely return to the child's home;
 - C. if continuation of active efforts to reunify is determined to be inconsistent with the permanency plan for the child, active efforts shall be made to place the child in a timely manner in accordance with the permanency plan (including, if appropriate, through an inter-jurisdictional placement) and to complete whatever steps are necessary to finalize the permanent placement of the child.

IV. Active Efforts to Finalize a Permanency Plan

- A. YSS must obtain a judicial determination that it has made active efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child is considered to have entered foster care, and at least once every 12 months thereafter while the child is in foster care.
- B. If such a judicial determination regarding active efforts to finalize a permanency plan is not made within 12 months of the date the child is considered to have entered foster care, and at least once every 12 months thereafter, the child becomes ineligible under title IV-E at the end of the 12th month in which the judicial determination was required to have been made, and remains ineligible until such a determination is made.

V. When Active Efforts to Prevent Removal or Reunify are Not Required

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

- A. A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances, as defined herein.
- B. A court of competent jurisdiction has determined that the parent has been convicted of:
 - i. Murder of another child of the parent;
 - ii. Voluntary manslaughter of another child of the parent;
 - iii. Aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter; or
 - iv. A felony assault that results in serious bodily injury to the child or another child of the parent; or,
- C. The parental rights of the parent with respect to a sibling have been terminated involuntarily.

VI. Permanency Hearings When Active Efforts Are Not Required When a

- judicial determination is made that active efforts are not required
- A. a permanency hearing, which considers interstate and inter-jurisdiction permanent placement options for the child, shall be held for the child within 30 days after the determination; and
 - B. active efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; and

- C. active efforts to place a child for adoption or with a legal guardian, including identifying appropriate interstate and inter-jurisdiction placements may be made concurrently with reasonable and active efforts to reunify.

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

- A. If the active efforts and contrary to the welfare judicial determinations are not included as required in the court orders, a transcript of the court proceedings is the only other documentation that will be accepted to verify that these required determinations have been made.
- B. Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of active efforts and contrary to the welfare judicial determinations except for the first 12 months that Yurok Tribe's title IV-E plan is in effect.
- C. Court orders that reference Tribal law (or the laws of another jurisdiction) to substantiate judicial determinations are not acceptable, even if the law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal can only be ordered after active efforts have been made.

YSS shall provide timely, active efforts to prevent removal from the home, and to unite or reunite any child with his or her parent, guardian, caretaker, or custodian after removal from the home except where there is a finding of aggravated circumstances. However, the Court may order services if it is in the best interests of the child.

The duty to make active efforts includes the duty to:

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

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

Case reports and plans

YSS or other agency designated by the court shall develop a case plan in all cases. A case plan means a written document which is a discrete part of the case record, developed jointly with the parent(s) or guardian(s) of the child.

For the purpose of determining proper disposition of a child, written reports and other material relating to the child's mental, physical, and social history may be received and considered by the court along with other evidence.

The court, either on its own motion or if so requested by the child, the child's parent or guardian, or other interested party, shall require that the person who wrote the report or prepared the material appear as a witness and be subject to both direct and cross-examination.

The case plan shall be made available to the court, and the parties as deemed appropriate by the court at least five (5) court days prior to the hearing at which it will be considered.

Trial Home Visits

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

(b) Alternative Permanency Plans

YSS may develop and implement an alternative permanency plan for the child while simultaneously making active efforts to unite or reunite the child with his parent, guardian, or custodian. Such an alternative plan may include a family conferencing plan.

SECTION 5010: EMERGENCY CUSTODY/DETENTION HEARING

(a) Filing of an Emergency Petition Seeking Detention

1. Within three (3) court days of the removal of a child YSS shall file a petition for emergency custody with the Court.
2. If no petition is filed, the child shall be released within three (3) court days from when he was taken into emergency custody.

(b) Purpose

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

(c) Delivering the Child into Custody

The tribal representative who takes a child into custody shall:

1. Release the child to his parent, guardian or custodian or other responsible adult immediately when the condition that created the need for emergency custody no longer exists, and issuing verbal instructions or warnings is sufficient to protect the child; or
2. Deliver the child immediately to a family advocate, YSS Staff, or to a shelter care facility designated by the court, or to a medical facility if the child is believed to be in need of medical attention. If appropriate, a Tribal representative taking a child into custody may deliver the child into the custody of a previously designated caretaker or extended family member at their discretion.
3. In all cases, a child taken into custody under this Section shall be released to his parent, guardian or custodian within three (3) Court Days of the time he was taken into emergency custody unless the court issues an order following a hearing pursuant to this statute granting an extension of custody.

(d) Emergency Custody Petition

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

Any petition filed under this section must include allegations that:

- (A) The child is suffering from an illness or injury, and no parent or custodian is providing adequate care for him, or;
- (B) The child is in imminent danger from his surroundings, removal is necessary for the safety or well-being of the child, or failure to remove the child may result in a substantial risk of harm to the child, or;
- (C) The child will be subject to injury or abuse by others or by himself if not placed in custody by the court, or;
- (D) The child has been abandoned by his parent, guardian caretaker, or custodian, or;
- (E) No parent or custodian is able or willing to provide adequate supervision and care for the child; or
- (F) The child will run away or be taken beyond the jurisdiction of the court, and will be unavailable for further proceedings.

2. If a child was taken into emergency custody without a hearing, the court shall conduct a hearing within three (3) Court Days from when the child was taken into emergency custody to determine whether the emergency custody was proper.
3. In assessing whether or not the child should be returned to the home, the tribal court may consider previous findings of child maltreatment by the parents, guardians or custodians and the availability of other family members to care for the child as well as the facts leading to the present removal of the child.

(e) Hearings and Notice

The parents, guardian, caretaker, or custodian of a child taken into emergency custody shall be given reasonable notice of the time and place of the emergency custody hearing. That notice will be given at least 5 hours prior to the hearing which is schedule within three (3) court days of detention as noted above, unless the parent, guardian, caretaker, or custodian can not be located and/or unless conditions of notice, e.g., flooding, road closures, or other acts of inclement weather make such notice attempts dangerously inadvisable. In such case(s) that notice cannot be effected YSS must file a Declaration of Due Diligence fully setting forth the circumstances preventing such notice.

(f) Dismissal for Failure to Notify

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

(g) Persons Present; Hearsay Evidence

1. Unless requested by a parent, guardian, caretaker, or custodian and consented to or requested by the child concerning whom the petition has been filed, the public shall not be admitted to an emergency custody hearing. The judge may nevertheless admit such persons as he/she deems to have a direct and legitimate interest in the particular case or the work of the court.
2. A report prepared by YSS, and hearsay evidence contained in it, where the hearsay declarant is a peace officer, a health practitioner, a social worker, or a teacher, is admissible and constitutes competent evidence upon which a finding of jurisdiction [a finding that a child is, or is likely to be, a CINA] may be based.
3. The preparer of the report shall be made available for cross-examination upon a timely request by any party. The court may deem the preparer available for cross-examination if it determines that the preparer is on telephone standby and

can be present in court within a reasonable time of the request or available by telephone.

4. A CASA shall be appointed to any unrepresented child in all Court proceedings pursuant to Section 5030 of this Code. The CASA volunteer shall be presented all relevant documents in that child's cases including, but not limited to, Social Services Reports, Court Findings and Orders, Discovery materials and all petitions filed.

(h) Timing of Emergency Custody Hearing

The court shall immediately, and in no event more than three Court Days after being notified of the removal of a child from his or her home, hold an emergency custody hearing. If present at the hearing, a parent, guardian, or custodian of the child may request a continuance of the hearing for the purpose of preparing a response to the allegation that the child is a CINA. The court may grant the request on a showing of good cause for why the parent, guardian, or custodian is not prepared to respond to the allegation. During a continuance, the child remains in the emergency custody of YSS.

(i) Basis for Removal.

The Court may order:

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

(A) The child is suffering from an illness or injury, and no parent or custodian is providing adequate care for him; or

(B) The child has been subjected to aggravated circumstances, child is in imminent danger from his/her surroundings, removal is necessary for the safety or well-being of the child, or failure to remove the child may result in a substantial risk of harm to the child, or;

(C) The child will be subject to injury or abuse by others or by himself if not placed in custody by the court; or

(D) The child is an abandoned infant, or has been abandoned by his/her parent or custodian, or;

(E) No parent or custodian is able or willing to provide adequate supervision and care for the child, or;

(F) The child will run away or be taken beyond the jurisdiction of the court, and will be unavailable for further proceedings.

2. If a child was taken into emergency custody without a hearing, the court shall conduct a hearing within three Court Days from when the child was taken into emergency custody to determine whether the emergency custody was proper.

3. In assessing whether or not the child should be returned to the home, the tribal court may consider previous findings of child maltreatment by the parents, guardians or custodians and the availability of other family members to care for the child as well as the facts leading to the present removal of the child.

(j) Reasonable Cause

1. If the court is not satisfied by the facts alleged in the petition that reasonable cause exists to believe that:

(A) The child is a CINA; and

(B) One or more of the conditions listed in the section on grounds for emergency hearings has occurred or will occur if the child is released, the court shall order that the child be released immediately.

2. Finding of Reasonable Cause

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

(k) YSS to Make Prima Facie Case

The tribal social worker shall report to the court on the reasons why the child has been removed from the parent's, guardian's or custodian's physical custody and the need, if any, for continued removal. The court shall order the release of the child from custody unless a prima facie showing has been made that the child is a CINA, the court finds that continuance in the parent's, guardian's, or custodian's home is contrary to the child's welfare, and any of the following circumstances exist:

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

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

(l) Notification of Rights

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

2. Right to Present Evidence: A parent, guardian, caretaker, or custodian, or lawyer for such person, child over the age of (12) twelve, or lawyer for a child of any age, shall be given the opportunity to present evidence to the Court at the emergency custody hearing, which evidence may include evidence that the child can be returned to the parent's, guardian's or custodian's or caretaker's care pending the jurisdiction hearing without further jeopardy to the child's health or safety, without endangering the health or safety of others, or without fear of removal of the child from the area.

(m) Findings and Active Efforts Pursuant

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

1. Whether return of custody to the parents, guardian, or custodian is contrary to the child's welfare because the child has suffered or is at substantial risk of suffering serious physical or emotional harm pursuant to Section 5010(i); and
2. Responsibility for placement and care of the child is vested with YSS; and
3. Whether active efforts have been made to prevent the removal of the child or that active efforts to prevent removal and reunify were not required due to aggravated circumstances; and return the child after the emergency removal, but that said efforts have not been successful;

YSS may develop and implement an alternative permanency plan for the child while simultaneously making active efforts to unite or re-unite the child with his parent, guardian or custodian.

(n) Possible Emergency Custody Hearing Outcomes

1. Disposition on Finding of Probable Cause: If the court determines there is probable cause to believe the child is a CINA, the court may:
 - (A) Detain and set a timely re-hearing of the Petition for Emergency Custody and grant emergency custody of the child to the Tribe, and place the child in the physical custody of a non-parent(s), guardian, or custodian pending the jurisdiction hearing; and set a jurisdiction hearing; or
 - (B) Detain and set a timely re-hearing of the Petition for Emergency Custody and grant emergency custody of the child to the Tribe, and place the child in the physical custody of another appropriate person, or in shelter or foster care; and set a jurisdiction hearing; or
 - (C) Affirm any other reasonable plan recommended by YSS and/or stipulated to by the parties, including but not limited to the postponement of proceedings; and
 - (D) Order such restrictions on contact or visitation that the court deems appropriate; and
 - (E) Set additional preliminary inquiry hearings or other hearings as necessary.
2. Dismissal of the Petition:

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

(o) Evidence in Emergency Custody Hearings

1. Use of Reports: For the purpose of establishing that a child is a CINA, determining proper disposition of a child, and/or periodically reviewing the child's and family's progress, written reports and other materials relating to the child's mental, physical, educational, and social history and condition, may be received

in evidence and may be considered by the court along with other evidence. The court may also require that the person who prepared the report or the person or persons whose opinions or statements are contained within such reports, appear as a witness if such person or persons are reasonably available.

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

(p) Court Ordered Evaluations

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

2. The court may also order an examination of a parent, guardian, or custodian whose ability to care for the child is at issue if the court finds evidence presented at the hearing that the parent's or guardian's or custodian's physical, mental, or emotional condition may be a factor in causing the maltreatment of the child. Such examination may be ordered only for purposes of custody disposition and with consent of the parent, guardian, or custodian.

(q) Emergency Placement Preferences

In any out-of-home placement (Protective Parent) of an Indian child, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) a foster home licensed, approved, or specified by YSS; (3) an Indian foster home licensed or approved by an authorized non-Yurok licensing authority; or (4) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

YSS may establish a different order of placement preference upon a showing of good cause.

Any child accepted for foster care or pre-adoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. Active efforts must be made to place siblings in the same home.

(r) Secure Detention Prohibited

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

(s) Visitation

1. Responsibilities and Rights of Parents; Right to Visitation

Whenever a child is temporarily or permanently removed from the custody of one or both parents, each parent shall have the right to reasonable and frequent visitation, provided that the parent's rights have not been terminated but such visitation will be subject to limitations imposed by the court for the child's protection.

2. Responsibilities and Rights of Extended Family Members; Right to Visitation. Any member of a child's extended family has the right to reasonable visitation with that child if necessary for the best interests of the child.

3. Effect on Visitation Rights of a Finding of Aggravated Circumstances. After a finding of the existence of an aggravated circumstance with regard to a parent, guardian or custodian, caretaker, or extended family member, the court may deny that parent, guardian or custodian, caretaker, or extended family member visitation rights with respect to any child who has been adjudicated a CINA.

SECTION 5011: JURISDICTION HEARINGS

(a) Timing

The Jurisdiction Hearing shall be held no later than thirty (30) days following conclusion of the Emergency Custody Hearing but may be held in conjunction with the Emergency Custody Hearing.

(b) Purpose

The purpose of the Jurisdiction Hearing is for the Court to reassess whether continuing court involvement is necessary to protect the well-being of the child, and to determine whether continuation in the home is contrary to the welfare of the child and whether active efforts have been made to prevent the child's removal from the home and to safely reunify the family.

(c) Findings

1. The Court shall find the allegations of the petition to be true or dismiss the petition, unless the hearing shall be continued to a date certain to allow for the presentation of further evidence.
2. Jurisdictional matters of the age and residence of the child shall be deemed admitted by or on behalf of the child, unless specifically denied prior to the Jurisdiction Hearing.
3. When it appears that the evidence presented at the hearing discloses facts not alleged in the petition, the Court may proceed immediately to consider

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

SECTION 5012: DISPOSITION HEARINGS.

(a) Timing

The Tribal Court shall hear evidence regarding the proper disposition best serving the interests of the child and his or her tribe. The Disposition Hearing may be held in conjunction with the Jurisdiction Hearing if that is in the best interest of the child and the parties.

(b) Evidence

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

(c) Findings & Orders

1. The Tribal Court shall determine:

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

Comment [BK1]: the court should not have the responsibility of determining placement for the child that is the responsibility of the agency that maintains care and custody of the child

- placement recommendation of the case plan is appropriate.
2. The Court may find that out-of-home placement is not needed to protect the child, but may continue court intervention and supervision due to unresolved problems in the home.
 3. The Court may find that the child shall remain out of the home. The grounds for continued removal are those found in Section 5010(d). Any Finding that the child shall remain out of the home shall be made by Clear and Convincing Evidence. Should the Court find that the child shall remain out of the home, the Court must also find that:
 - A. Continuance in the home is contrary to the child's welfare;
 - B. Temporary placement and care of the child is vested with YSS department, and
 - C. Active efforts have been made to prevent removal of the child, or to return the child after the emergency removal, but said efforts have not been successful.
 4. The Court may find that out-of-home placement is necessary, but with the performance of specified actions by the parent, guardian or custodian, the child may be returned absent good cause to the contrary. The order of the Court shall specify actions, and the time frames for such actions, that the parents, guardians, or custodians must accomplish before the child is returned. The order shall also specify the responsibilities of any support agency or personnel to be involved. The Tribal Court may order a trial home visit. The Court order must explicitly delineate the length and other parameters of the home visit.
 5. The Court may find that out-of-home placement continues to be necessary and further that the child shall not be returned to the home, absent further order of the Court. The Court shall specify what steps the parents, guardians or custodians shall take to demonstrate their abilities to care for their child, and specify what factors the court will consider at a subsequent hearing to determine whether or not the child should be returned home.
 6. In addition to the placement disposition alternatives, the Court may order the child, parents, custodians, or guardians to attend any of the following if the Court determines they are related to the circumstances which cause the child to come to the attention of the court, and if they are likely to promote the best interests of the child and his or her Tribe and the reunification of the child with his or her family.
 - A. Parenting education classes;
 - B. Alcohol or substance abuse treatment;
 - C. Wellness Court services;
 - D. Anger Abatement classes;
 - E. Counseling for victims or perpetrators of domestic violence; or
 - F. Any other services that the Court determines may be useful in aiding family reunification.
 7. The Court may continue the Disposition Hearing on its own motion or on the motion of any interested party, for a reasonable period to receive reports or for

good cause. If the hearing is continued, the court shall make an appropriate order for care of the child during the continuance.

8. In scheduling investigations and hearings, the court shall give priority to proceedings concerning children who have been removed from their homes before an order of disposition has been made.

SECTION 5013: STATUS REVIEW HEARINGS

(a) Timing

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

(b) Purpose and Findings

1. A child shall be returned home at the Status Review Hearing unless the Tribal Court finds that a reason for removal as set forth above in this Children's Code still exists. The Court may, however, due to unresolved problems in the home, continue court intervention, services and supervision as appropriate.
2. If appropriate, the Court may refer the matter to the Tribe's Peacemaker Mediation Forum or for Family Unity Conferencing.
3. At the status review hearing, the court will determine:
 - A. The safety of the child and the continuing need for jurisdiction and appropriateness of the child's placement;
 - B. the extent of compliance by all parties with the case plan;
 - C. the extent of progress the parent has made toward alleviating or mitigating the causes necessitating the placement and whether sufficient progress is being made to consider return home in the near future;
 - D. consider whether the services provided to the family have been appropriate, accessible and provided in a timely manner;
 - E. whether YSS can reasonably provide additional services which will facilitate the return of the child to parental care;
 - F. assess YSS's concurrent case planning and efforts to effect an alternative permanent plan in the event there is insufficient progress to restore custody;
 - G. whether active efforts have been made by the YSS to alleviate the need for removal;
 - H. project a likely date when the child will be returned and safely maintained at home or when an alternative permanent plan will be

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

SECTION 5014: PERMANENCY HEARINGS

Yurok holds permanency hearings for all children under the responsibility for placement and care of YSS including children for whom YSS claims federal reimbursement for the cost of voluntary foster care maintenance payments.

(a) Timing

No later than twelve (12) months from the “date the child entered foster care” and at least once every twelve months thereafter while the child remains in foster care, the Court must hold a Permanency Hearing. This hearing may be held in conjunction with a Status Review Hearing. In any case in which no reunification services are offered, the permanency hearing must be held within thirty (30) days of the disposition hearing. In the case of an abandoned infant, the permanency hearing must be held within sixty (60) days of the disposition hearing.

(b) Purpose

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

1. returned home;
2. placed for adoption/Customary Adoption and YSS will file a petition for the termination of parental rights;
3. referred for Legal Guardianship;
4. referred for permanent placement with a fit and willing relative; or
5. in cases where YSS has documented to the court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian, placed in another planned permanent out-of-home living arrangement.

(c) **Additional Considerations:** The Court shall consider the following:

1. whether YSS has made active efforts to alleviate and eliminate the need for removal of the child from parental care;
2. whether YSS has engaged in concurrent planning to develop an alternative permanent plan for the child in the event that the parent is unable to improve his/her circumstances sufficiently to retrieve custody of the child;
3. why permanent plans, other the ones selected, are not in the best interests of the child and that this is the least restrictive placement for the child;
4. in all cases in which the court does not direct the filing of the petition to terminate parental rights the, court shall specify compelling reasons why termination of parental rights would not be in the best interests of the child. Such compelling reasons might include:
 - A. Tribal custom and tradition.
 - B. Tribal policy whether oral or written.
 - C. Tribal policy or tradition disfavoring or prohibiting termination of parental rights
 - D. relationship between the parent and child
 - E. relationship between the child and the Tribe
 - F. the best interests of the child
 - G. special needs of the child.
5. assess YSS's concurrent case planning and efforts to effect an alternative permanent plan in the event there is insufficient progress to restore custody;
6. If the child has not been returned to the custody of his or her parent, guardian or legal custodian at the Permanency Hearing, or if the child has been in foster care for 15 of the most recent 22 months, the Court shall order a hearing under Section 5015, unless the child is being cared for by a relative, YSS has

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

7. In the case of a child who will not be returned to the parent, the hearing shall consider in-State/Tribal service area and out-of-State/Tribal service area placement options;
8. In the case of a child placed out of the State/Tribal service area in which the home of the parent(s) of the child is located, the hearing shall determine whether the out-of-State/Tribal service area placement continues to be appropriate and in the best interests of the child;
9. In the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living; and
10. In any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, procedural safeguards shall be applied to assure the court consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child.

(d) Long Term Foster Care

Long-term foster care arrangement with non-relatives cannot be considered acceptable permanent placements unless there are specific reasons documented by the agency on a case-by-case basis as to why this should be permitted.

(e) Findings

The required findings at the Permanency Hearing are the same as those of a Status Review Hearing (outlined in Section 5013(b)(4) above) with the addition of the findings around the child's permanency plan outlined in 5014(b) above.

SECTION 5015: TERMINATION OF PARENTAL RIGHTS

PROCEDURE FOR FILING A PETITION TO TERMINATE PARENTAL RIGHTS:

- (a). On behalf of YSS, the Office of the Tribal Attorney or other designated official shall either file a petition, or seek to be joined to a petition filed by another party, to terminate parental rights of the child's parent(s) where:

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

(2) A court of competent jurisdiction has determined a child to be an abandoned infant as defined in § 5003(b); or

(3) A court of competent jurisdiction has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent. Under such circumstances, the petition to terminate parental rights is to be made within 60 days of a judicial determination that active efforts to reunify the child and parent are not required.

(b). The petition must be filed by the end of the child's 15th month in foster care. In calculating when to file a petition for termination of parental rights, the Tribe:

(1) will calculate the 15 out of the most recent 22 month period from the date the child entered foster care as defined at section 475(5)(F) of the Act;

(2) will use a cumulative method of calculation when a child experiences multiple exits from and enters into foster care during the 22 month period;

(3) will not include trial home visits or runaway episodes in calculating 15 months in foster care;

(c). YSS may elect not to file a petition or join a petition to terminate parental rights if:

(1) At the option of YSS the child is being cared for by a relative;

(2) YSS has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child. Compelling reasons might include, but are not limited to:

(A), Tribal Custom and tradition,

(B). Tribal Policy, whether oral or written, whether by custom, ordinance, or resolution, disfavoring or prohibiting termination of parental rights;

(C). The relationship between the parent and the child;

(D). The relationship between the child and the Tribe

(E). The best interests of the child

(F). The special needs of the child;

(G). The Tribe's interest in maintaining the parent-child status, and the child's contact with the Tribe, and;

(H). Any other relevant considerations.

(I). Grounds for termination do not exist.

or

(2) The Tribe has not provided to the family of the child, consistent with the time period in the case plan, such services as the Tribe deems necessary for the safe return of the child to the child's home, if active efforts are required to be made with respect to the child.

(d). Where subsection (1) applies, the Office of the Tribal Attorney, or other designated official shall file a petition to terminate the parental rights of the child's parent(s) (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption pursuant to the provisions of the Adoption and Protective Parent definitions above.

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

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

A protective parent may be appointed with or without the consent of the identity parent.

SECTION 5016: ADOPTION

There shall be three types of adoptions recognized by this Tribe, namely:

(a) Statutory adoptions under Tribal law entered into pursuant to the provisions of the Adoption and Protective Parent definitions in Section 5003..

(b) Statutory adoptions under the laws of some other Tribe, State, or Nation having jurisdiction over the parties and the subject matter including California Tribal Customary Adoption pursuant to California Welfare & Institutions Code Section 366.24 as it existed on the date of adoption of this code.

(c) Traditional adoptions which may be for the purpose of establishing any traditionally allowed family relationship between any persons, and which shall be

governed by the Tribal Common Law until such time as the proper procedures for such adoptions are written down as a part of the Tribal Code at which time traditional adoptions shall be governed by such procedure. Unless otherwise specifically provided by Tribal statute, traditional adoptions create a particular stated family relationship between persons for all purposes other than enrollment and the probate of decedents' estates.

SECTION 5017: KINSHIP CARE/GUARDIANSHIPS

(a) Findings

1. The child has been:

Removed from his home pursuant to a voluntary agreement or as a result of a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child.

Eligible for foster care maintenance payments for at least six (6) consecutive months while living in the home of the prospective relative guardian (whether or not the child actually received payments).

Returning the child home and adoption are not appropriate permanency options.

The child has a strong attachment to the proposed guardian (and has been consulted about the guardianship if 14 years of age or older),

The guardian has a strong commitment to permanently caring for the child.

(b) Kinship Guardianship Agreement

There must be a kinship guardianship agreement that specifies: 1) the amount of the payment, and the manner in which the amount may be adjusted periodically, 2) the additional services that the child and guardian are eligible for and how to apply for them, 3) that the cost of obtaining guardianship will be reimbursed up to a maximum of \$2,000.00, and 4) that the agreement will remain in force regardless of where the guardian resides.

A copy of the agreement shall be provided to the prospective relative guardian.

SECTION 5018: TRANSFER FROM OTHER JURISDICTIONS AND/OR TRANSFER UNDER INDIAN CHILD WELFARE ACT 25 U.S.C. 19 et seq. AND/OR CONCURRENT JURISDICTION WITH OTHER JURISDICTION

(a) Transfer of Jurisdiction to Tribal Court

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

1. A party interested in transferring jurisdiction to Tribal Court must first file a petition to transfer, along with any supporting documentation, stipulations or legal authorities, as appropriate or necessary, with the Tribal Court.
2. Upon issuance of a Tribal Court order accepting transfer of jurisdiction, the transferring court shall consider the transfer. Both courts must approve of the transfer.
3. The transferring court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. Sec. 1901-1963, where they do not conflict with the provisions of this Code.
4. After another court transfers a case to the Tribal Court's jurisdiction and transmits all documents and legal and social records, the Tribal Court shall proceed with the case as if the petition had been originally filed in the Tribal Court.

(b) Certification of Cases Transferred Under Indian Child Welfare Act

In cases transferred to the tribal court under the Indian Child Welfare Act ("ICWA"), 25 U.S.C. 1911 (b), the court may adopt the state court's certification of aggravated circumstances or hold its own hearing regarding the existence and applicability of an aggravated circumstances determination by the state under this chapter.

(c) Concurrent Jurisdiction Cases

YSS or another jurisdiction may petition the court to jointly and/or concurrently supervise cases which are within the subject matter jurisdiction of the Code. The petition and subsequent order will specifically delineate the responsibility of each jurisdiction.

SECTION 5019: CASA

(a) CASA APPOINTMENTS

1. Court Appointed Special Advocates (CASA) Appointments

At any stage of the proceedings conducted under this Code, the Tribal Court may appoint a CASA for the child when, in the opinion of the judge, a child requires services which can be provided by the CASA, consistent with the Rules of Court.

2. CASA Qualifications and Duties

(A) A "CASA" is a person who has been recruited, screened, selected, and trained, in accordance with National CASA Association Standards who is being supervised and supported by the Tribal CASA program, and who has been

appointed by the court as a sworn officer of the court to help define the best interests of a child or children in juvenile and ward ship proceedings

(B) The duty of the CASA is to represent the interests of the child, and he or she shall be a party to the proceedings. A child fourteen (14) years of age or older is presumed capable of determining what is in his or her best interests. It is the duty of the CASA to represent the child's wishes in such cases. For children under fourteen (14) years of age, the CASA shall make a determination as to the best interests of the child regardless of whether that determination reflects the wishes of the child. However, the wishes of the child are always relevant to the determination of best interests and shall be weighed according to the competence and maturity of the child.

(C) Tribal CASAs must be duly qualified and appointed pursuant to the Tribal CASA program guidelines and policies prior to working on any case and receiving confidential information.

(D) The Tribal Council through its CASA Advisory committee shall adopt guidelines for the screening of CASA volunteers, which shall include personal interviews, reference checks, check of records of sex offences and other criminal records, information from the department of Motor Vehicle, and other information as the Tribal Council deems appropriate.

(E) Each CASA is an officer of the Court, with the relevant rights and responsibilities that pertain to that role and shall act consistently with the rules of court pertaining to CASA's

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