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| Sec. 04.01.001 | Central Council Tlingit & Haida Child and Family Court Established |
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There is hereby established the Central Council Tlingit & Haida Child and Family Court, herein after Child and Family Court, a division of the CCTHITA Tribal Court, which has the authority to hear cases arising under this statute involving persons under the age of eighteen (18) which are within the jurisdiction of CCTHITA.

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| Sec. 04.01.002 | Purpose |
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The purpose of this statute is to honor the values and traditions of our ancestors to promote respect, education, and justice to our children, grandchildren, and future generations of Tlingit and Haida people.

Tlingit and Haida Traditional and Cultural Systems

The Tlingit (Lingit) and Haida cultures shall be given due recognition in the application of this Statute and by the Child Welfare Tribal Court by honoring and utilizing the natural support systems of our tribal and clan relationships, and the traditional ways of our people that includes our culture, language, songs, dance, stories, respecting our elders, and tribal values. Tlingit and Haida clan ties incorporate our diverse languages and customs, kinship systems, historical ties to our land and resources, and many other characteristics that unite the tribal membership into common identities. While many aspects of our cultural practices and lifestyles have changed within our villages and communities of Southeast Alaska, the underlying authority of the Tlingit and Haida clan systems have endured and still exist today.

Many of today's problems that put our children and families at risk are a result of alcohol and substance abuse which further leads to issues of child abuse, neglect, and family violence. Such problems have been closely linked to the loss of our traditional ways of life, roles, and support systems for tribal members within our villages and communities

of Southeast Alaska, and the impacts of poverty and substance abuse have affected the cohesion and stability of the tribal family unit.

Our children, viewed as the seeds of our future, are traditionally treated with care, shown their place in the world, and taught how they relate to the clan system and community. They are given life lessons by both the mother's and father's family, and learn that they possess an identity that is based in their kinship.

Learning one's genealogy is vitally important for a child during their growing up years. Our relationship to one another has purpose. We don't have cousins, we have brothers and sisters. Our mother's sister (Tlaak'w) is mother. Our father's brother is uncle (Sani or Eesh). Our father's sister (aat) is auntie. Our children are brought up with a sense of belonging, starting before birth with family talking to and connecting with the child while still in the womb!

Our clan system is and remains a part of the child, even when they are raised outside the clan. They are still related. Traditionally, a child stayed within a clan house, first with Auntie (TI'aak'w) then with Aat. We never had orphans; we took care of our own. If the child grows up with knowledge and experience of the clan system, they know the importance of their place within their clan. The opposite clan was always available to take in a child, but only if there is no one available from the child's clan. This was the traditional placement preference.

Termination of parental rights should be considered only in extreme circumstances and only if all other possibilities have failed. Traditionally, if a clan adoption occurred, there was no termination of parental rights. The situation was discussed at a round table as to what was best for clan and community (village) and the child. Decisions were made in a manner that was non-judgmental towards families. The primary concern that existed was for that of the children and the clan. The child should always know who they are.

The death of a clan member sets in motion a number of things. Unlike "western" concepts, the mourning members of the deceased are actually the clan of the deceased member itself. Traditionally, it would be turned over to the clan leaders and/or maternal nephew(s), who, would take care of the deceased and they will then place at.aow their own behind the deceased to show their in-laws that they are "standing with them." All of this is what we call, Woosh yaa awudane – Respect for Each Other. Therefore, father's and his family play an important role throughout the child's life. Again, genealogy plays a big part in this scenario. People on the father's side, opposite grandparents are appointed, by this Lingit law, the connection of the child is shown through this practice of our people as a clan system. This entire process is important and protects family lineage. We say in Lingit, "Haa shuka awe", or "This is our future" Haa kusteey aya, "This is our way of life."

Sec. 04.01.003 Construction

This Statute is exempt from the rule of strict construction. It shall be read and understood in a manner that gives full effect to the purpose stated, and the Court may seek guidance from the Elder's Court in this matter at its own discretion.

Sec. 04.01.004 Definitions

When the words listed in this section appear in this chapter, they shall have the following meaning unless a different meaning is clearly intended.

- A. Abandonment:** The conscious disregard of parental or custodial responsibilities toward a minor by failing to provide support, supervision, or to maintain regular contact without justifiable cause.
- B. Adult:** Any person who is either eighteen (18) years of age or older, married, or emancipated.
- C. Child in Need of Care:** A child that has been found by the Court to be abandoned, neglected, or abused as defined in Section 04.02.002 of this Statute.
- D. Court:** The Central Council Tlingit & Haida Child and Family Court.
- E. Cultural Connection Agreement:** A binding contract between a parent or guardian and the Tribe that ensures a child remains connected with his or her culture and traditions.
- F. Custodian:** A person or entity having legal authority over a child either by court order or parent's permission. This term generally applies to foster parents, child placing agencies, and persons temporarily caring for a child at the request of a parent.
- G. Extended Family:** This term does not have a precise definition. Under Tlingit and Haida custom and traditions, there are formal and informal ties, which bind the community. Extended family ties are based on bloodlines, marriage, friendship, and caring. All women in the community become "auntie" or "grandma" when they become a certain age, regardless of blood relationship. Although grandparents (including great and great-great), aunts, uncles, siblings, cousins, "in-laws" and "step" relations are all extended family, any member of the Tlingit and Haida communities who is reliable, responsible, loving, and willing to care for a child may be considered extended family.
- H. Guardian:** A person other than the child's parent who is responsible, by law, for that child.

- I. Indian Tribe:** Any tribe, band, nation, or group of Indians recognized by the Secretary of Interior as eligible for services provided to Indians; any treaty tribe, metis community, or non-status Indian community from Canada; and any tribe recognized as such by CCTHITA, regardless of federal recognition status.
- J. Indian Child:** Any unmarried person under the age of (18) years who is:
1. A member of a federally recognized Indian Tribe;
 2. Eligible for membership in a federally recognized Indian Tribe, including eligibility for adoption into tribal membership;
 3. The child or grandchild of a member of a federally recognized Indian Tribe;
 4. Eligible for membership or a member of a Canadian band; or
 5. Considered to be Indian by himself or herself and by the Tlingit & Haida community in which he or she resides.
- K. Parent:** This term includes a biological or adoptive parent but does not include persons whose parental rights have been terminated. It also does not include an unwed father who has not acknowledged or established paternity in one of the following ways: being identified as the father on the child's birth certificate, by acknowledging paternity to tribal enrollment authorities or to a court, or through formal paternity proceedings under state or tribal law.
- L. Presenting Officer:** Any person appointed by the President and affirmed by the Executive Council to file petitions regarding child welfare on behalf of the Tribe. This person shall be a member of the CCTHITA Tribal Court Bar, but need not be a licensed attorney.
- M. TFYS:** The Tribal Family and Youth Services Program.
- N. Tribal Status:** The tribe or tribes, if any, in which a child is a member or eligible for membership. (Membership and enrollment are used interchangeably in this Statute.)
- O. Tribe:** The Central Council of Tlingit and Haida Indian Tribes of Alaska, or CCTHITA.

Sec. 04.01.005 Jurisdiction

A. Generally:

- 1.** The CCTHITA Child and Family Court shall have jurisdiction over any proceeding arising under this statute, and any action arising under the customs and traditions of the CCTHITA tribal community affecting family or child welfare, which involves:
 - a.** a child who is enrolled or is eligible for enrollment in the Central Council of Tlingit and Haida Tribes of Alaska, regardless of the child's residence or domicile; or
 - b.** any other Indian child with the consent of all parties.
- 2.** The CCTHITA Child and Family Court shall have jurisdiction over adults in furtherance of its powers under this statute. The Court may issue such orders as are necessary for the welfare of children and their families.
- 3.** The limitations on jurisdiction contained in this chapter do not reflect the Tribe's view as to the legally permissible limits of jurisdiction and are merely designed to limit tribal activity in accordance with tribal priorities and resources.

B. Concurrent Jurisdiction: Whenever state, federal, or other tribal courts have jurisdiction over any matters provided for in this statute, the Child and Family Court has concurrent jurisdiction over the same matters.

C. Notice to Other Tribes: Active efforts shall be made to determine whether the child is a member or eligible for membership in another tribe. If the Child and Family Court has reason to believe that a child who is the subject of a proceeding under this chapter is a member or eligible for membership in another tribe, notice of the proceeding shall be given to the other tribe. The notice shall request a written response within fifteen (15) days indicating whether the other tribe intends to act in the matter.

D. Transfer of Jurisdiction: The Child and Family Court has the authority to accept transfer of jurisdiction from other courts or government agencies. The Court shall only transfer a case under this chapter to another court pursuant to the following procedures:

- 1.** In cases where more than one government has an interest in a proceeding and a motion for transfer of jurisdiction has been received, or on motion of the Child and Family Court if the Court determines that a transfer of jurisdiction to the other court may be

in the best interest of the child, the Court shall hold a hearing upon notice to all parties.

2. The Child and Family Court shall weigh the following factors and decide whether or not compelling reasons exist to transfer jurisdiction:
 - a. the wishes of the parent, custodian, or guardian;
 - b. the wishes of the child, if he or she is able to understand the meaning of a transfer of jurisdiction;
 - c. the recommendation of tribal social and health services staff;
 - d. the place each party lives and their tribal status;
 - e. the ties and contacts each party has with the communities involved;
 - f. the stage of the proceedings in each of the courts with a claim to jurisdiction at the time the motion is brought;
 - g. whether the other court has timely responded to the notice of the CCTHITA Child and Family Court;
 - h. whether the other court or government has previously declined to accept, or failed to accept, a transfer of jurisdiction over the child.

Sec. 04.01.006 Sovereign Immunity

Nothing in this statute shall diminish, impair, or be construed to waive the right of CCTHITA to assert the defense of sovereign immunity, and nothing contained herein shall impair the validity of this defense; and the right to assert that defense is and shall remain inviolable.

Sec. 04.01.007 Confidentiality of Records and Proceedings

- A. All child protection cases shall be considered and treated as confidential. Hearings shall be closed. All Tribal Court Judges, the Tribal Court Clerk, tribal employees who participate in a case, and involved agency personnel shall maintain confidentiality.

- B.** All records of proceedings are strictly confidential and shall be retained in accordance with the CCTHITA Records Retention policy for ICWA records. Records of proceedings may be released only:
 - 1.** by an order of the CCTHITA Child and Family Court; or
 - 2.** upon written request to the Chief Judge of the CCTHITA Tribal Court by named parties to the action or a member of the CCTHITA Tribal Court Bar representing a party to the action.

Sec. 04.01.008 Rights of Parties

In all proceedings under this statute, the parties shall have the right:

- A.** To have a spokesperson advise and represent them at their own expense;
- B.** To request a continuance of the proceeding in order to seek legal representation;
- C.** To have the opportunity to subpoena witnesses;
- D.** To have the opportunity to introduce, examine, and cross-examine witnesses;
- E.** To have the opportunity to discover, offer, and inspect evidence;
- F.** To have the opportunity to present arguments and statements; and
- G.** To not be a witness against themselves.

There is no right to a jury trial in any proceeding under this statute.

Sec. 04.01.009 Procedure for Hearings

All proceedings under this statute are civil proceedings. Except as otherwise provided in this statute, hearings shall be governed by the CCTHITA Tribal Civil Procedures, Title 06, Chapters 20, 21, 22, 23 & 24.

- A. Parties.** The following may be a party to actions under this Statute:
 - 1.** The petitioner;
 - 2.** The child;
 - 3.** The child's parent(s);

4. The child's guardian(s) or custodian(s);
5. The presenting officer or other designated representative of CCTHITA;
6. Any tribe in which the child is enrolled or eligible for enrollment; and
7. Any person the Court deems necessary for proper adjudication or for the best interest of the child.

B. Notice

1. No hearing shall go forward without written notice to all parties, unless otherwise provided in this statute.
2. The notice of hearing shall include:
 - a. The nature of the proceeding and name of the Court;
 - b. The date, time, and place of the hearing;
 - c. Instructions for response to the petition, when applicable; the name and address of the Court with which responses and other pleadings must be filed; the names and addresses of all parties on whom responses and other pleadings must be served; and the manner by which filing and service must be accomplished; and
 - d. A copy of the petition.

C. Service

1. All notices of hearing shall be served by the Clerk of Court by regular mail, postage pre-paid to the parties last known address, unless otherwise provided in this statute and except as follows:
 - a. notice of the Emergency Custody Order shall be served in accordance with Section 04.03.001;
 - b. notice of the First Hearing shall be served in accordance with Section 04.03.003; and
 - c. notice of the Fact Finding, Guardianship, Termination, and Adoption Hearings shall be served on the child's parents

and/or guardians by personal service or Certified Mail, return receipt requested.

2. All other pleadings (including reports) shall be filed with the Court and all Parties no later than 5 business days prior to the scheduled hearing, unless otherwise ordered by the Court. Any party may submit reports or other pleadings by filing them with the Court. Any document filed with the Court must be served by the submitting party on all other parties at least three (3) days prior to the hearing, following the procedure set forth in this section, unless otherwise provided in this statute. Written answers, if any, to such reports and pleadings may be filed and served one (1) day prior to the hearing.
3. Service is not complete until an Affidavit, Declaration, or Certificate of Service has been filed with the Court. The Court may order an alternate method of service.

Sec. 04.01.010 Recognition of Foreign Judgments

The Child and Family Court may give recognition to orders issued by a state or another tribal court if the order does not violate the Indian Child Welfare Act and the court granting the order had jurisdiction over the case, due process was afforded to all parties, and the order does not violate the public policy of the Central Council of Tlingit and Haida Indians of Alaska. Any party seeking recognition of a foreign judgment shall follow the procedures set out in CSC Stat. No. 10.05, Section 10.05.002.

Chapter 02. Child in Need of Care

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Sec. 04.02.001 Procedures and Guidelines

The Tlingit and Haida people have always protected children and assisted families in accordance with Traditional laws. The written procedures in this statute are meant to better coordinate the services the Tribe offers children and families and to facilitate cooperation between the Tribe and other governments, persons, and entities toward the mutual goal of providing for the safety and well-being of the Tribe's children.

When there is a question of whether a child is in need of care, the presumption shall be in favor of providing protection for the child. Separation of children from their parents should be seen as a last resort, and when such separation is necessary for the safety and well-being of the child, the primary goal of these sections is successful reunification of children with their parents.

This Statute does not address situations where a person who is under eighteen (18) years of age has committed an act which if committed by an adult would constitute a crime or for which a penalty is provided under tribal law.

The Tribal Family and Youth Services Program, herein after TFYS, is empowered to develop or adopt standards and procedures for achieving the purposes of these sections. TFYS is encouraged to make use of models, indicators, guidelines, protocols, manuals, textbooks, and other social work aids developed by qualified researchers and practitioners provided they are [not in]consistent with Tlingit and Haida Traditional laws and this statute, and to seek the guidance of qualified elders, historians, or other Tribal representatives to achieve the purposes of these sections.

Sec. 04.02.002 Child in Need of Care

Traditional custom recognizes that a parent may need to place a child with another caregiver temporarily. This is not in itself grounds for a child in need of care action, provided the placement is intended to be temporary and the designated caregiver is adequately caring for the child.

A “child in need of care” is an unmarried person under the age of eighteen years who meets one or more of the following criteria:

- A. Has no parent, guardian, or custodian available and willing to care for him/her or has been abandoned;
- B. Has suffered or is likely to suffer a physical injury, inflicted upon him/her by other than accidental means, which causes or creates a substantial risk of death, disfigurement, or impairment of bodily function;
- C. Whose parent, guardian, or custodian has not, for reasons other than poverty, provided adequate food, clothing, shelter, medical care, education, or supervision necessary for his/her health and well being;
- D. Who has been sexually abused or exploited by a parent, guardian, or custodian, either intentionally or negligently;
- E. Who has committed delinquent acts as a result of parental pressure, guidance, approval, or failure to properly supervise;
- F. Who has been emotionally abused or emotionally neglected; or
- G. Who is born addicted to alcohol or exposed to a controlled substance, which has resulted in physical and/or mental harm to the child.

Sec. 04.02.003 Reporting Abuse and Neglect

The care of children is both a family and a tribal responsibility.

- A. **Voluntary reporting:** Any member of the tribal community and any persons residing within the jurisdiction of the Tribe, including Tribal staff, who have a reasonable belief that a child has been abused or neglected may file a report that a child is in need of care.
- B. **Mandatory reporting:** Reporting is mandatory for tribal employees and contractors with the tribe who perform services to the community in the areas of education, health and human services, child care, and law enforcement; members of the clergy; private child care providers; members of the Tribe's Child Protective Team (CPT); and anyone providing services to children, whether paid or volunteer, who have a reasonable belief that a child has been abused or neglected.

Sec. 04.02.004 Immunity

All persons who report child abuse or neglect in good faith and without malice are immune from civil liability for reporting the suspected abuse or neglect.

Sec. 04.02.005 Failure to Report and False Reporting

Any person who is required to report abuse or neglect under this statute, and who knowingly fails to report abuse or neglect, and any person who knowingly makes a false report of abuse or neglect may be subject to a civil fine not to exceed \$500.00 and/or community service.

Sec. 04.02.006 Contents of the Report

A report shall include:

- A. The name, birth date, address, and tribal status of the child, if known; and
- B. A plain statement of the facts on which the report is based, including the date, time, and location of the events.

The name of the reporter may be kept confidential and not be disclosed at the reporter's request.

Sec. 04.02.007 Open Communication Policy

The policy of CCTHITA toward investigation of child abuse and neglect is one of open communication between agencies and departments for the protection of children while respecting the confidentiality of statements by victims, their families, and reporters of abuse/neglect. Where there is a conflict between confidentiality and the need for communication, protection of the child shall be the overriding consideration.

Sec. 04.02.008 Role of the Tribal Family and Youth Services Program

The Tribal Family and Youth Services program has been established as a CCTHITA agency responsible for the provision of youth-related services.

Sec. 04.02.009 Role of the Family Caseworker

The Family Caseworker may:

- A. Provide assistance to families, using best case management practices, to prevent out of home placement and to reunite families.
- B. Prepare reports and appear in court as required under this statute and by the Court.

- C.** Coordinate and communicate with all agencies and departments involved in the protection of children.
- D.** Prior to the commencement of any child welfare proceeding in Child and Family Court, other than transfer proceedings from a state or other tribal court, make a preliminary determination whether the subject child is within the jurisdiction of the Tribe pursuant to this statute and investigate the child's circumstances to try and achieve resolution.
- E.** Initiate child welfare proceedings in those cases where resolution can not be achieved.
- F.** Work with the CCTHITA Presenting Officer in providing the information needed to file petitions for children in need of care in Tribal Court.
- G.** Work cooperatively with state OCS workers when necessary to carry out the objectives of any state/tribal agreement.
- H.** Take the lead role in finding appropriate placements for the child.
- I.** As soon as possible, notify the parent(s), guardian(s), or custodian(s) of the placement if they are unaware that the child has been placed out of the home, but the location of the placement shall not be released if, in the determination of the Family Caseworker, release of that information would endanger the child. The parent(s), guardian(s), or custodian(s) shall also be notified of their right to visit or be present with the child unless such visitation or presence has been determined to be against the child's safety and well-being, in which case the parent(s), guardian(s), or custodian(s) shall be notified of their right to petition the Court for visitation rights.
- J.** Appear in state and other tribes' courts as necessary.

Sec. 04.02.010 Court Appointed Special Advocates (CASA)

A Court Appointed Special Advocate, or CASA, is a person appointed by the Court to represent the best interests of a child. The Court shall appoint a CASA when a parent cannot exercise sound judgment on behalf of the child, unless no one is available to serve as a CASA.

Chapter 03. Emergency Placement of a Child

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Sec. 04.03.001 Emergency Custody Orders

- A. **Petition:** The Presenting Officer may file a petition for an Emergency Custody Order. If the Presenting Officer is not available to file such a request, any person that has personal knowledge through direct observation that a child is in an emergency situation that may more likely than not result in substantial physical or emotional harm may file a petition for an Emergency Custody Order.
- B. **Hearing:** The Child and Family Court judge shall convene an Emergency Hearing within forty-eight (48) hours to determine whether to grant the Emergency Custody Order. The Court may issue an Emergency Custody Order upon an oral or written statement of fact showing probable cause to believe that a child is in need of care and that his or her health, safety, and welfare will be seriously endangered if not taken into custody.
- C. **Contents:** The order shall specifically name the child to be taken into custody, state the time and date issued, the place where the child is to be taken, and the name of the person or persons authorized to take the child into custody. The order shall be signed by the judge. An Emergency Custody Order may be transmitted by the judge via telephone, computer, or fax, if the judge, the parties, and the person requesting the Emergency Custody Order cannot be at the same location. Orders so transmitted shall be followed as soon as practical by a signed, original order.
- D. **Service and Duration:** An Emergency Custody Order must be executed within 24 hours from the time the judge issues it. The child taken into custody under such an order may be released into the custody of their parent(s), guardian(s), or custodian(s) or held until the conclusion of the First Hearing or as ordered by the Court. The Emergency Custody Order must be served upon the child's parents, guardian(s), or custodian(s) upon taking the child into custody or as soon as possible thereafter.

Sec. 04.03.002 Request for First Hearing

A person or agency who takes emergency custody of a child shall file within forty-eight (48) hours a request for a First Hearing with the Court. The request shall include:

- A. The name, date of birth, permanent address, and tribal status of the child and his or her parent, custodian, or guardian;
- B. The facts establishing the Court's jurisdiction;
- C. A statement of the facts which support the allegation that the child is in need of care; and
- D. The location of the child and the date and time taken into custody. The location of the child does not have to be shared with the parent if it would endanger the child.

Sec. 04.03.003 First Hearing - Time, Notice

Within three (3) days of taking a child into emergency custody, a hearing shall be convened by the Court. Written notice, as provided in Section 04.01.009, shall be served on all parties no later than twenty-four (24) hours before the hearing unless good cause, including the inability to locate the parties, prevents such notice. If the parent(s), guardian(s), or custodian(s) do not appear at the hearing, the Court may order a recess to try to find them.

Sec. 04.03.004 First Hearing - Order

The Court shall make the following determinations at the First hearing:

- A. The tribal status of the child;
- B. Whether there is probable cause to believe the child is in need of care;
- C. The best interest of the child and the Tribe with regard to any action to be taken;
- D. Whether out-of-home placement shall be continued for the protection of the child or if the child can safely be returned to the home;
- E. Whether the child will be made a ward of the Court;
- F. Whether interim orders for the protection of the child and/or the family should be made while further proceedings are being considered. Interim orders may include restraining orders and orders that parties be evaluated for substance abuse, mental illness, and emotional disturbance and that the

recommendations of evaluators be followed. The Court may also order parenting classes, mandatory school attendance, visitation, and other services or activities for the benefit of the child and his or her family. The Court may make a particular placement conditional on compliance with any of its orders.

- G. The parties shall be ordered to keep the Court informed as to any changes in their whereabouts and mailing addresses.

Sec. 04.03.005 Placement Preferences for Out of Home Placement

If a child is placed out-of-home, the following placement preferences shall be observed, in order:

- A. In the home of a member of the child's immediate, extended or clan family, whether or not the home is a licensed foster home;
- B. In the home of a member of the child's tribe;
- C. In the home of a person from another tribe; or
- D. In emergency placements, in a licensed foster home, or other safe place.

Placement of a child with anyone who is not a member of CCTHITA or who does not reside in a CCTHITA community shall be contingent on the person's written agreement to consent and submit to the jurisdiction of the CCTHITA Child and Family Court and to cooperate fully with local law enforcement and the TFYS program.

TFYS will be responsible for conducting a preliminary investigation of an out of home placement to ensure the safety of the child.

Sec. 04.03.006 Scheduling a Fact Finding Hearing at First Hearing

If it appears that a petition for Fact Finding will soon be filed, based on the findings at the First Hearing, the Court shall set a time and date for a Fact Finding Hearing and shall so notify the parties at the conclusion of the First Hearing. Notice of the hearing shall be provided to any party who was not present at the First Hearing.

Chapter 04. Fact Finding Hearings

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| Sec. 04.04.003 | Time and Notice of Hearing |
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| Sec. 04.04.005 | Agreed Order |
| Sec. 04.04.006 | Family Protection Plan |
| Sec. 04.04.007 | Disposition |
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| Sec. 04.04.009 | Review Hearings |

Sec. 04.04.001 Purpose

The Court shall conduct a Fact Finding Hearing to determine whether a child is in need of care.

Sec. 04.04.002 Contents and Filing of the Petition

A petition for Fact Finding Hearing shall be filed by a designated Presenting Officer or other person authorized by the Tribe to file the petition. The petition must be filed with the Court within seven (7) days from the conclusion of the First Hearing. The Petition shall include:

- A.** The name, date of birth, permanent address, and tribal status of the child and his or her parent, custodian, or guardian;
- B.** The facts establishing the Court's jurisdiction;
- C.** A detailed statement of the facts and reasons which support the allegation that the child is in need of care. If a request for a First Hearing was filed, it may be incorporated in this petition; and
- D.** The location of the child and the time taken into custody. The location of the child does not have to be disclosed if it would endanger the child.

Sec. 04.04.003 Time and Notice of Hearing

The Court shall set the date for the hearing to take place within fourteen (14) days of the date the petition is filed. Service of the Notice of Hearing shall be as provided in Section 4.01.009.

Sec. 04.04.004 Evidence and Burden of Proof

Rules of evidence and burden of proof shall be the same as those which apply to civil actions before the CCTHITA Tribal Court in accordance with CSC Stat. No. 6.22, Sections 06.22.002 and 06.22.003.

Sec. 04.04.005 Agreed Order

The parties to a Fact Finding Hearing may agree to a proposed order which resolves some or all of the issues of the case. Before deciding whether to approve the agreed order, the judge may hold an in-chambers, ex parte discussion with the parent, custodian, or guardian to:

- A. Explain the proposed agreed order in detail and the consequences of the person's failure to comply with agreed terms;
- B. Assure that the person's consent to the proposed order is not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person;
- C. Explain the person's right to a spokesperson/counsel;
- D. Explain that the Tribe has the burden of proving the allegations in the petition and that the person does not have to agree to the proposed order;
- E. Explain that once the person agrees to the proposed order and it is signed and entered by the Court, it will be too late for the person to change his or her mind.

The in-chambers conversation will be recorded. If the parent wants a friend, family member, or other people to be present, the judge may allow it after first speaking alone with him or her. If the Court finds that any consent was the result of fraud or duress, the agreed order shall be vacated.

Sec. 04.04.006 Family Protection Plan

The Family Caseworker may convene a family group conference to include the child's family in the development of the Family Protection Plan. The Family Caseworker shall prepare a written Family Protection Plan describing his or her recommendations for caring for the child and assisting the child's family. The plan shall explain why the recommendations are necessary and the benefits of the plan to the child and the family. The plan shall fully explain any recommendations for out-of-home placement of the child. The experts consulted, including the opinions of extended family members, para-professionals, and elders from the child's clan, may be cited in the plan. The Family Caseworker shall file the report with the Court and provide copies to all parties at least five (5) days before the Fact Finding Hearing.

Sec. 04.04.007 Disposition

If a child is determined to be in need of care, the Court shall order the Family Protection Plan, or an alternative plan, to best meet the needs of the child and to assist the child's family. At the Court's discretion, an additional hearing may be set to modify the Family Protection Plan. The Court ordered plan shall either allow the child to remain with his or her parent, guardian, or custodian or order an out-of-home placement consistent with the placement preferences in Section 04.05.009. The Court may make any placement conditional on compliance with its orders. The Court shall make any other orders necessary for the protection and well-being of the child and family. Such orders may include restraining orders and orders that parties be evaluated for substance abuse, mental illness, and emotional disturbance and that the recommendations of evaluators be followed. The Court may also order parenting classes, mandatory school attendance, visitation, and other services or activities for the benefit of the child and his or her family.

Sec. 04.04.008 Costs of Support

If an out-of-home placement is ordered, the child's parents or guardian from whom the child was removed may be ordered to provide support for the child. Payments, in-kind goods, or services shall be made to the Tribal Child Support Unit (TCSU) and released to the person or agency having physical custody of the child for the benefit of the child, or otherwise coordinated by TFYS. TCSU shall coordinate the receipt and distribution of support contributions.

Sec. 04.04.009 Review Hearings

The Court shall conduct a hearing to review its Plan at least once every six months, or earlier upon motion of any party. The Court shall review whether the parties are complying with the order and shall consider whether modification is necessary to protect the child and strengthen the family.

Chapter 05. Long-Term Guardianship

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| Sec. 04.05.015 | Termination of Guardianship |

Sec. 04.05.001 Purpose

It has long been the custom of CCTHITA that a child may be cared for by persons other than a parent, without excluding the parent from the child's life. It is intended that these sections be applied with flexibility for a variety of family situations and problems.

Sec. 04.05.002 Petition for Guardianship - Who May File

Any person at least eighteen (18) years old may file a petition with the Child and Family Court requesting that he or she be appointed as the long-term guardian of a child. A petition filed by a married person shall also be signed by the married person's spouse unless his or her whereabouts are unknown.

Sec. 04.05.003 Petition - Contents

A petition for appointment of a long-term guardian shall include:

- A.** The name, birth date, residence, and tribal status of the child who is the subject of the petition;
- B.** The name, birth date, residence, and tribal status, if known, of the child's parent(s) and of the petitioner(s);
- C.** If the child is residing with someone other than a parent, the location and length of time at that location; and

- D. A statement by the petitioner(s) of the facts and reasons supporting his or her request to be appointed as a guardian.

Sec. 04.05.004 Setting the Hearing

When the Court receives the petition, it shall set a hearing date which shall not be more than forty (40) days after the Court received the petition, unless continued for good cause. Service of the Notice of Hearing shall be as provided in Section 04.01.009.

Sec. 04.05.005 Child Welfare Report

For every long-term guardianship petition, the Family Caseworker shall provide the Court, or arrange for the Court to be provided, with a complete guardianship, home study report including, but not limited to, a recommendation as to the petitioners' financial ability to support the child. The Family Caseworker shall file and serve the guardianship report, as provided in Section 04.01.009.

Sec. 04.05.006 Additional Reports

Any party may file and serve a report setting forth his or her recommendations regarding the guardianship, as provided in Section 04.01.009.

Sec. 04.05.007 Guardianship Hearing

The hearing shall be private and closed. Only those persons the Child and Family Court finds to have a legitimate interest in the proceedings may attend. The Court shall hear testimony to determine whether long-term guardianship is in the best interest of the child and the tribal community. The Court shall consider all guardianship reports submitted for review. All parties shall be given the opportunity to contest the factual contents and conclusions of the guardianship reports.

Sec. 04.05.008 Grounds for Appointing a Guardian

If the Child and Family Court finds that the child is without care or custody, that the petitioner(s) can provide appropriate and adequate parental care for the child, and that the long-term guardianship is in the best interest of the child and the CCTHITA, it shall order long-term guardianship pursuant to the petition. "Without care or custody" in this section means that:

- A. The child has been abandoned;
- B. The child has been found to be a "Child in Need of Care" in accordance with this statute;
- C. The child's parents voluntarily agree, without duress and in the presence of the Child and Family Court judge, to the long-term guardianship;

- D.** The child's parents are deceased. If the child's parents are deceased and have left a legal will nominating or otherwise recommending a guardian or other caretaker for the child, the parents' recommendation shall be honored by the Child and Family Court absent a specific finding based on clear and convincing evidence that the parents' recommendation would be detrimental to the best interest of the child.

Sec. 04.05.009 Placement Preference

The preference for appointment of a long-term guardian shall be:

- A.** In the home of a member of the child's immediate, extended or clan family, whether or not the home is a licensed foster home;
- B.** In the home of a member of the child's tribe;
- C.** In the home of a person from another tribe; or
- D.** A member of the T&H community, which shall include persons living in or near a T&H community who participate in tribal activities and are considered part of the tribal community, based on evidence presented at the hearing;
- E.** If the above criteria cannot be met, for good cause shown, placement may be made with any person who has knowledge of and a desire to foster the child's tribal affiliation and special needs.

Sec. 04.05.010 Powers of Guardian

- A.** Unless otherwise ordered by the Court, a long-term guardian has all the rights and responsibilities of a parent for the child, except that the following shall require Court approval:
 - 1.** Sterilization.
 - 2.** The enrollment of a child who is eligible for enrollment in CCTHITA in another tribe.
- B.** Unless otherwise ordered by the Court, the guardianship shall not be subject to continuing review by the Court or subject to continuing supervision by CCTHITA TFYS.
- C.** A child shall not be removed from the custody of his or her guardian except under circumstances that would warrant removal if the guardian were the child's parent.

Sec. 04.05.011 Appointment of Guardian for a Child's Property

The Court may appoint a person or financial institution to be the guardian of a child's property. This may be a different person than the guardian who provides direct care to the child.

Sec. 04.05.012 Existing Trusts

If the child's property is subject to a trust (for example, where a parent has died leaving property to a child in a trust set up in the will), the guardian is bound by the trust provisions. The Court has the power to review any trust in connection with appointment of a guardian and to impose any protections necessary to enforce the trust, to ensure that the guardian fully and regularly accounts for trust funds, and to see that the funds are properly managed.

Sec. 04.05.013 Removal of Guardian for a Child's Property

- A. The Court has the power to remove a guardian for a child's property and appoint a replacement guardian whenever necessary for the child's best interest.
- B. When a child whose property is in guardianship reaches the age of eighteen (18), s/he may petition the Child and Family Court to terminate the guardianship and enter such orders as may be necessary to place him/her in control of his/her property and earnings.

Sec. 04.05.014 Change of Address

Guardians shall immediately notify the Court, in writing, of any change of address.

Sec. 04.05.015 Termination of Guardianship

- A. Generally, a long-term guardianship shall terminate upon the death, marriage, emancipation, adoption, or eighteenth birthday of the child (unless continued by the Court) or upon order of the Court.
- B. Upon the petition of a parent of a child in long-term guardianship, the child may be returned to the parent, after notice and hearing, upon a showing by clear and convincing evidence that the parent is willing and able to resume permanent care of the child and that return to the parent is in the best interest of the child.

Chapter 06. Termination of Parental Rights

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| Sec. 04.06.009 | Consent |
| Sec. 04.06.010 | Disposition |

Sec. 04.06.001 Purpose

The CCTHITA has not traditionally provided for the termination of a parent's rights. It is currently the custom of the Tribe to view involuntary termination of a parent's rights as a last resort when it is clear that long-term guardianship is insufficient to meet the needs of the child and an adoption has been arranged.

Sec. 04.06.002 Petition for Termination of Parental Rights - Who May File

- A. Voluntary Termination Petition:** Any person at least eighteen (18) years old may file with the Court consent to allow the adoption of his or her child.
- B. Involuntary Termination Petition:** Only the CCTHITA Presenting Officer or a designated representative of CCTHITA may file a petition for involuntary termination of a parent's rights.

Sec. 04.06.003 Petition - Contents

A petition for termination of a parent's rights shall include:

- A.** The name, birth date, residence, and tribal status of the child who is the subject of the petition;
- B.** The name, birth date, residence, and tribal status, if known, of the child's parent(s), guardian(s), or custodian(s);
- C.** If the child is residing with someone other than a parent, the location and length of time at that location;
- D.** A statement by the petitioner (whether the petitioner is the Tribe or a parent) of the facts and reasons supporting the request; and

- E. A copy of the adoption petition filed in conjunction with the termination petition.

Sec. 04.06.004 Setting the Hearing

When the Court receives the petition, it shall set a hearing date which shall not be more than forty (40) days after the Court receives the petition, unless continued for good cause. Service of the Notice of Hearing shall be as provided in Section 04.01.009.

Sec. 04.06.005 Child Welfare Report

For every termination petition, the Child Welfare Caseworker shall provide the Court, or arrange for the Court to be provided, with a pre-termination report. The person preparing the report shall conduct a complete home study and shall consult with the child's parent(s); all health, education, and social service personnel who have had prior professional contacts with the child; and with the petitioner(s) to determine whether termination of the parent's rights would be in the best interest of the child. The report shall be in writing and contain the professional opinions of all persons consulted. The Court may waive the requirement of a pre-termination report in cases where a parent is consenting, provided that all requirements for a proper consent under this chapter have been met. The Family Caseworker shall file and serve the pre-termination report, as provided in Section 04.01.009.

Sec. 04.06.006 Additional Reports

Any party may file and serve a report setting forth his or her recommendations regarding the proceeding, as provided in Section 04.01.009.

Sec. 04.06.007 Termination Hearing

The hearing shall be private and closed. Only those persons the Court finds to have a legitimate interest in the proceedings may attend. In addition to the notice requirements of Section 04.01.009, special efforts shall be made to locate the parent(s) whose rights may be terminated. The Court shall consider all reports submitted for review. All parties shall be given the opportunity to testify and to contest the factual contents and conclusions of the pre-termination report(s).

Sec. 04.06.008 Grounds for Termination and Burden of Proof

The Court may order termination of a parent's rights only when an appropriate adoptive home is available and an adoption petition has been filed in conjunction with the termination petition. In addition, the Court must, in cases of voluntary termination, first approve the parent's consent as provided herein, or in cases of involuntary termination, the Tribe must prove by clear and convincing evidence each of the following:

- A. That the child has been abandoned or is a "Child in Need of Care" as provided in this statute.
- B. That termination of the parent's rights and adoption are in the best interest of the child and of the CCTHITA;
- C. That the Tribe has offered or helped arrange for appropriate resources to help the parent care appropriately for the child; and
- D. That it is unreasonable to expect that the parent will ever be able to care appropriately for the child.

Sec. 04.06.009 Consent

Consent of a parent to terminate his or her rights to a child is not valid unless:

- A. The parent is at least eighteen (18) years old;
- B. The parent has received counseling from an appropriate professional who has explained the consequences of terminating his or her rights, has explored all available services to help the parent care for the child (such as parenting classes and substance abuse treatment), and has explored alternatives to termination and adoption, such as long-term guardianship;
- C. The parent orally explains his or her understanding of the meaning of the termination of his or her parental rights to the Child and Family Court and the Court makes a specific finding that the terms and consequences of the consent were fully explained to and were fully understood by the parent; and
- D. The consent is given no sooner than thirty (30) days after the birth of the child. The child may be placed with the prospective adoptive parents or other care giver during this 30 day period.

Any consent may be withdrawn prior to the entry of a final decree of adoption and, if no other grounds exist for keeping the child from the parent, the child shall be returned to the parent.

Sec. 04.06.010 Disposition

If parental rights are terminated by the Child and Family Court, the Court shall set the adoption hearing date. This hearing may take place the same day as the termination hearing or may take place up to thirty (30) days from the date of the adoption hearing. If parental rights are not terminated, but the Court finds that the child is in need of care as provided in this statute, the Court may set a "Hearing to Decide the Family Protection Plan" in accordance with Section 04.01.009.

Chapter 07. Adoption

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Sec. 04.07.001 Petition for Adoption - Who May File

Any person at least eighteen (18) years old may file a petition with the Court to adopt a child. If the petitioner is married, his or her spouse must also be at least eighteen (18) years old and must sign the petition, unless the spouse's whereabouts are unknown or unless waived by the Court.

“Spouse” for purposes of this section includes a partner to a relationship in which the partners undertake together to provide for the care, control, education, health, and welfare of the partners' minor children.

Sec. 04.07.002 Petition - Contents

The adoption petition shall include:

- A.** The name, birth date, residence, and tribal status of the child who is the subject of the petition;
- B.** The name, birth date, place and duration of residence, and tribal status of the petitioner(s);
- C.** The name, birth date, residence, and tribal status, if known, of the child's parent(s);
- D.** The relationship, if any, of the petitioner(s) to the child;
- E.** The names and addresses, if known, of all persons whose consent is required and proof of such consent;

- F.** A description of all previous court proceedings involving the care or custody of the child to be adopted and the results of these proceedings along with copies of all court orders;
- G.** The reasons the child is available for adoption and why the petitioner(s) desires to adopt the child;
- H.** A request to change the child's name if the petitioner(s) wish to make such a request; and
- I.** A copy of any termination petition filed in conjunction with the adoption petition.

Sec. 04.07.003 Availability for Adoption

A child may be adopted only if the child's parents are deceased or if parental rights to the child have been terminated.

Sec. 04.07.004 Setting the Hearing

When the Court receives the petition for adoption it shall set a hearing date, which shall not be more than forty (40) days after the Court receives the petition, unless continued for good cause shown. Service of the Notice of Hearing shall be as provided in Section 04.01.009.

The Secretary of the CCTHITA shall be a necessary party to all adoption proceedings before the CCTHITA Child and Family Court.

Sec. 04.07.005 Child Welfare Report

For every adoption petition, the Family Caseworker shall provide the Court, or arrange for the Court to be provided, with a complete pre-adoption, home study report including, but not limited to, the following:

- A.** The physical and mental condition of the child, petitioner(s) and persons living in the petitioners' home;
- B.** The circumstances of the voluntary or involuntary termination of the parents' rights to the child or of the parents' death;
- C.** The home environment, family life, access to health services, and resources of the petitioner(s);
- D.** The child's and petitioners' cultural heritage and tribal status;
- E.** The marital status of the petitioner(s);

- F. The names and ages of the petitioners' children and of any other persons residing with the petitioner(s);
- G. Information from health, education, and social service personnel who have had prior professional contacts with the child and petitioner(s);
- H. The results of a criminal background check of the petitioner(s);
- I. Any evidence of alcohol and drug abuse in petitioners' household;
- J. Any other facts and circumstances relating to whether or not the adoption should be granted.

The Family Caseworker shall file and serve the pre-adoption report, as provided in Section 04.01.009.

Sec. 04.07.006 Additional Reports

Any party may file and serve a report setting forth his or her recommendations regarding the adoption, as provided in Section 04.01.009.

Sec. 04.07.007 Adoption Hearing

The hearing shall be private and closed. Only those persons the Court finds to have a legitimate interest in the proceedings may attend. The Court shall consider all adoption reports submitted for review. All parties shall be given the opportunity to testify.

Sec. 04.07.008 Grounds for Entering Decree of Adoption

The Court may enter a decree of adoption if it finds that:

- A. The child is available for adoption as provided in Section 04.07.003;
- B. The adoption is in the best interest of the child and the CCTHITA; and
- C. The petitioner(s) can provide appropriate and adequate parental care for the child.

Sec. 04.07.009 Placement Preferences

The Court shall consider the following placement preferences in deciding whether to grant the petition for adoption, unless good cause exists to the contrary:

- A. In the home of a member of the child's immediate, extended or clan family, whether or not the home is a licensed foster home;

- B.** In the home of a member of the child's tribe;
- C.** In the home of a person from another tribe; or
- D.** A member of the T&H community, which shall include persons living in or near a T&H community who participate in tribal activities and are considered part of the tribal community, based on evidence presented at the hearing;
- E.** If the above criteria cannot be met, for good cause shown, placement may be made with any person who has knowledge of and a desire to foster the child's tribal affiliation and special needs.

Sec. 04.07.010 Denial of Adoption Petition

If the adoption petition is denied, the Court shall specifically state the reasons for the denial and shall designate who shall have custody of the child.

Sec. 04.07.011 Decree of Adoption

If the Court grants the petition for adoption, the Court shall enter Findings of Fact and Conclusions of Law and a separate Decree of Adoption. The Decree shall include:

- A.** A finding that the child is available for adoption;
- B.** A signed and notarized copy of the Cultural Connection Agreement;
- C.** An order that the child is, for all intents and purposes, the child, legal heir, and lawful issue of the petitioner(s);
- D.** A finding as to the marital status of the petitioner(s);
- E.** An order changing the name of the child and the full name of the child upon adoption, if such an order has been requested;
- F.** Orders directing the Court Clerk to forward a certified copy of the decree and affidavit to the appropriate Bureau of Vital Statistics for the purpose of obtaining a corrected birth certificate when the adoption becomes permanent;
- G.** An order that the records of the proceeding shall remain sealed unless otherwise ordered by the Court.

Sec. 04.07.012 Effect of Decree of Adoption

A decree of adoption has the following effect: it creates the relationship between the adopted child and the petitioner(s) and all relatives of the petitioner(s) that would have existed if the child were a legitimate, blood descendant of the petitioner(s). This relationship shall be created for all purposes including inheritance and applicability of statutes, documents, and instruments, whether executed before or after entry of the adoption decree, that do not expressly exclude an adopted person by their terms. The decree does not override any tribal enrollment laws or requirements nor does it affect the child's enrollment status as a member of any Tribe.

Sec. 04.07.013 Adoption Records

All records, reports, proceedings, and orders in adoption cases are confidential and shall not be available for release or inspection except:

- A.** The Bureau of Indian Affairs may have access to such information as is necessary to protect inheritance rights or the enrollment status of the adopted child (and his or her descendants);
- B.** A copy of the decree of adoption, but not the Findings of Fact and Conclusions of Law, may be given to a Bureau of Vital Statistics as provided in Section 4.07.011; and
- C.** An adopted child may petition the Court, upon reaching eighteen (18) years of age, for release of specifically requested information, limited to: the biological parents' name, address, tribal status, and social security number; the Cultural Connection Agreement; and the names and relationship to the child of relatives, for the purpose of medical need or medical history information, to assist in making a relative placement of a child of the adoptive youth, or for the purpose of enrolling the child or the child's descendants in an Indian Tribe or other Native nation or organization. Upon receipt of the petition submitted by the adopted child to gain information about his or her biological parents, the Child and Family Court shall review all information and order the release of such information as the Court may determine to be reasonably necessary to the lawful purposes set forth herein.

Chapter 08. Emancipation

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| Sec. 04.08.002 | Who May Petition |
| Sec. 04.08.003 | Contents |
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| Sec. 04.08.005 | Standard to Be Applied |
| Sec. 04.08.006 | Rights of Emancipated Child |

Sec. 04.08.001 Purpose

Any Indian child who is a resident or is domiciled within CCTHITA territories or T&H communities and is at least seventeen (17) years of age, who is living separate and apart from his/her parent, guardian or custodian, capable of self-support and of managing his/her own financial affairs, may petition the Court to have the status of an emancipated person for limited or general purposes.

Sec. 04.08.002 Who May Petition

A child may file this petition in his/her own name.

Sec. 04.08.003 Contents

The petition for emancipation shall state:

- A.** The name, birth date, and address of the child;
- B.** The name and address of each living parent;
- C.** The name and address of the child's guardian or custodian, if any;
- D.** The reasons why emancipation would be in the best interest of the child;
- E.** The purposes for which emancipation is sought.

Sec. 04.08.004 Consent or Written Recommendation

The child must obtain either the consent of each living parent, guardian, or custodian having control of the person or property of the child or an affidavit from a Family Caseworker or other appropriate service provider recommending emancipation and setting out the factual basis for the recommendation.

Amended April 19, 2008; April 14, 2009

Sec. 04.08.005 Standard to Be Applied

The Court may remove the disabilities of minority as requested in the petition if found to be in the best interests of the child, after a hearing. Emancipation may be for general purposes or the limited purposes specified in the order.

Sec. 04.08.006 Rights of Emancipated Child

Except for specific constitutional and statutory age requirements, including but not limited to, voting and use of alcoholic beverages, a child whose disabilities are removed for general purposes has the power and capacity of an adult including, but not limited to the right to control himself/herself and his/her property, the right to be domiciled where he/she desires, the right to receive and control all earnings, the right to sue and to be sued, and the capacity to contract.

Chapter 09. Alcohol & Substance Abuse

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| Sec. 04.09.002 | Definitions |
| Sec. 04.09.003 | Determinations of Alcohol or Substance Abuse |
| Sec. 04.09.004 | Determinations of Alcohol or Substance Abuse |
| Sec. 04.09.005 | Reasonable Accommodation to Handicapping Conditions |
| Sec. 04.09.006 | Breach or Failure of Conditions of Recovery Programs |
| Sec. 04.09.007 | Alcohol and Substance Abuse Committee Functions |

Sec. 04.09.001 Findings and Purpose

- A.** Whereas, the Central Council finds that alcohol and other substance abuse is a major problem and handicapping condition facing tribal members, and
- B.** Whereas, the Central Council finds that it is a priority to provide assistance to individual tribal members and tribal entities to help overcome the problems and handicaps which will enable the development of a more enjoyable and productive lifestyle for all tribal members, and
- C.** That, direction and coordination of efforts to reach and influence the actions of individuals and communities can best be accomplished through a comprehensive, inclusive approach which also encourages and supports local and individual efforts,
- D.** Therefore, the Central Council, through the support and funding of staff participation in the Alcohol and Substance Abuse Committee, volunteered by departments which provide services, or have the potential to contribute to solutions,
- E.** Shall, seek appropriate grant funding, projects and programs which can contribute to solution, as well as be available for helpful interaction with individuals and communities to implement appropriate education, prevention, adjudicative, and rehabilitative measures.

Sec. 04.09.002 Definitions

- A.** "**Alcohol or substance abuse**" means use which has noticeably and detrimentally affected an individual's ability to perform their work or other obligations to family and society to such an extent that further abusive use would tend to substantially affect their employment, familial, societal or legal obligations. It also includes an abusive use which is evidenced by severe or repeated verbal or physical abuse of others or property while under the influence of alcohol or drugs. Abuse may also be determined from

evidence by the majority of an individual's circle of close family, friends and employer/contractor, and the opinion of medical or substance-abuse trained personnel at an "intervention hearing."

- B. "Intervention hearing"** shall mean, for the purposes of this ordinance, a hearing conducted by substance-abuse trained personnel where a circle of friends, family, employer, or other significant persons who are affected by the substance user's abuse of alcohol or drugs, are gathered to present the person with evidence of the detrimental affect that the substance abuse has had on their lives or relationships or work. The object of the hearing is to confront the alleged abuser with such substantial evidence that their use of the alcohol or drugs is detrimental to themselves or others that they can no longer deny that it is a problem and handicapping condition which requires immediate attention such as entering a treatment facility, an out-patient program and/or recovery program, (see definition).
- C. "Recovery Program"** for purposes of this ordinance, this shall mean a formalized, written agreement of steps which a recovering individual will follow to work toward the goal of abstinence from further use and abuse of alcohol and/or drugs. It pertains only to voluntary agreements, (even though it may be pursuant to a condition of further employment or participation in tribal community social gatherings, following appropriate hearings.) It means a program tailored to the individual's needs and is subject to renegotiation between the recovering individual and the person or entity with whom the original program was structured and agreed upon.

Sec. 04.09.003 Determinations of Alcohol or Substance Abuse

- A.** A determination of alcohol or substance abuse that subjects an individual to termination from work shall be evidenced by written records of incidents of abuse by fellow employees and supervisors, as well as evidence that efforts were made to present the individual with choices concerning their continuing abusive use of the intoxicant or to enter upon a recovery program, (see definitions). A precondition to a termination for a finding of abuse of intoxicants should be prior warnings, requests that the person consult a physician and enter upon a recovery program and prior suspension without pay, unless the individual's excessive use has created a situation dangerous to the individual or others or to property so severe that a mere suspension or warnings would be inadequate to protect the endangered persons or property. It would be appropriate to notify proper law enforcement persons if such a danger exists and to verify that the situation was, indeed, a danger.
- B.** A determination of abuse by an entity shall be subject to requirements of confidentiality and respect for the privacy rights of the individual with the exception of persons who may be substantially and adversely affected if they

do not receive notice and persons who work in an abuse treatment program with the affected person.

Sec. 04.09.004 Reasonable Accommodation to Handicapping Conditions

All tribal programs, employers, and contractors shall provide reasonable accommodation to handicapping conditions. This shall mean, in regard to persons with alcohol and substance abuse problems, or as a condition to recovery, that;

- A. Employers allow reasonable time off from work, without penalty, for attendance at counseling or therapy sessions, whether individual or group, and whether self-initiated, imposed on the person by court or hearing orders, or as a condition of work for either an employee or sub-contractor.
- B. For time off from work to be considered reasonable, it must be pursuant to either an informal agreement between the supervisor, or a recovery program, (see definitions), of which the supervisor is aware. The selected times of work shall not substantially affect work product, such as when a particularly important meeting is scheduled, or a temporary time-dependent is a significant factor to its successful completion.
- C. Suspensions prior to a termination for abuse is suggested and considered to be appropriate to allow an employer/contractor time for investigation and evaluation of the situation, to conduct any hearing or intervention hearing with the employee/subcontractor.
- D. Reasonable accommodation to the handicapping conditions associated with recovery might mean changing minor job tasks or job stations within the limits of business necessity and reasonable expense. Alternatives which have been attempted should be documented for the individual's records as well as any denials of accommodation with reasons for the denial.
- E. Disputes as to whether reasonable accommodations have been made, should be submitted to the Alcohol and Substance Abuse Committee for a hearing or other attempted settlement, prior to any referral by them to one of the tribal courts.
- F. All employees, or other workers, for a tribal entity shall have equal access to counseling and referral services, and career planning for help in coping with and solving their personal and employment problems in progress toward a recovering lifestyle maximizing their individual potential.

Sec. 04.09.005 Breach or Failure of Conditions of Recovery Programs

- A. When a person has been determined to have breached a condition of their recovery program, (see definition), they shall be dealt with by the person or

entity with whom the recovery program was negotiated and agreed in the following suggested priority order and with the utmost care and consideration to allow the person to maintain a sense of personal dignity and control of their choices:

1. The person should be encouraged to express their reasons for failure or breach of their reasons for failure or breach of their program and to listen to other perspectives as to possible reasons for failure or breach. If these are agreed by the parties involved to be curable by modification of the recovery program, and particularly if the program has been substantially complied with, then modification of the specifics agreements is probably called for.
2. The person, if a worker, could be suspended following a hearing by others of the conditions of breach or failure. This might be particularly appropriate where Priority No. 1 fails, or where the person has had repeated failure/breaches.
3. Requesting or insisting as a condition of further employment, marriage, relationship, schooling, etc. that the person obtain specific treatment, counseling therapy, or court-ordered proceedings.
4. Termination.

Sec. 04.09.006 Alcohol and Substance Abuse Committee Functions

The committee shall:

- A. Seek appropriate funding.
- B. Establish and publish regulations and ordinances which amplify and clarify the intent of this ordinance to prevent, educated, and rehabilitate tribal members with an abuse problem or handicapping condition.
- C. Establish a preferred rating system for model individual recovery programs, remembering that they are ultimately tailored to the individual.
- D. Investigate and attempt to institute the use of successful rehabilitation efforts by other groups to use in the communities.
- E. Compile statistics on the incidence of tribal alcohol, substance abuse, and its impact on community. These statistics will be kept confidential except as generally used for fund-seeking or to facilitate the implementation of programs, with background information on individuals absolutely protected from disclosure.

CHAPTER 10. TRIBAL ADMINISTRATIVE REVIEW COMMISSION

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Sec. 04.10.001 Purpose and Policy

A. Purpose of Tribal Administrative Review Commission (TARC).

The purpose of the TARC is to encourage the preservation of Indian families and tribes by ensuring compliance with the Indian Child Welfare Act of 1978 and provisions of Alaska statutes (AS 47.05) providing for the protection of children, and the Alaska Tribal-State Agreement.

If the permanent placement plan for a child agreed to by the Tribe does not fall within the placement preferences of the Indian Child Welfare Act, and/or child's family does not agree with the recommended placement, then the TARC will be assembled to review the Tribe's position. "Permanent placement" shall mean a final placement for a child including adoption, legal guardianship, or return to parent.

Under THTC 04.05.070 of this Title provides regulations for a forum and process for parents and/or relatives to request an administrative review of the TFYS Department's position on a permanent placement plan in a state custody child welfare proceeding, that falls within the jurisdiction of the CCTHITA ICWA Program.

B. Policy of TARC. The policy of TARC is to protect the privacy of involuntary child custody matters of Indian children and to meet their needs for safety, well-being and permanence.

It shall be the policy of TARC to follow the safeguards of the Indian Child Welfare Act (25 U.S.C. 1911) the Indian Child Protection Act (PL 101-630) and the Adoption and Safe Families Act (PL 105-89).

Sec. 04.10.002 Jurisdiction of TARC

A. The Central Council of Indian Tribes of Alaska (CCTHITA) Department of Tribal Family and Youth Services (Department) is authorized jurisdiction

under 25 U.S.C. 1911, the Indian Child Welfare Act (ICWA) and under AS 47.10.230 (g) ICWA State Tribal Agreement, to represent the Tribe's interests when Indian children who are the subjects of a state involuntary child custody proceeding and fall within the jurisdiction of the CCTHITA ICWA Program (Skagway, Haines, Juneau, Wrangell, Petersburg, Craig, Klawock, Saxman and the At-Large Tlingit and Haida shareholders of Sealaska and the 13th Regional corporations).

- B.** The TARC shall duly consider requests for review of Department position on a permanent placement plan involving an Indian child who falls within the jurisdiction of the CCTHITA ICWA Program.

Sec. 04.10.003 TARC Membership

- A.** TARC members shall be Native American/Alaska Native people who are familiar with the special needs of Indian children in involuntary child custody proceedings within the jurisdiction of the CCTHITA ICWA Program.
 - 1.** Police background checks will be conducted on potential TARC members who would like to participate in other volunteer roles which would give them unsupervised access to children or developmentally delayed adults.
 - 2.** The CCTHITA President may appoint non-Indian resource persons as ex-officio non-voting members.
 - 3.** Members are to be community members who:
 - a.** Have a genuine interest in the welfare of children;
 - b.** Don't abuse alcohol/drugs;
 - c.** Don't have any convictions or felonies relating to offenses against a child; and
 - d.** Is able to satisfactorily pass a background check (federal minimum standards 25 U.S.C. 3201 et. seq.), if required by either the Indian Child Protection Act, P.L. 101-630 and/or the Adoption and Safe Families Act, P.L. 105-89
- B.** Persons interested in serving on the TARC shall:
 - 1.** Submit a completed "Application for Advisory Body Appointment", along with a current resume, two reference letters, a Authorization for Release of Information, and a Volunteer Applicant Disclosure

Affidavit, and submit them to the Department.

2. The Department will forward all applications to the President for selection and appointment.
- C. The members of a TARC convened to review the tribal position will rotate from a pool of qualified, trained members who will be appointed by President.
- D. Once an individual is selected to participate on the TARC, termination occurs only if the member resigns, consistently misses meetings unexcused, or a determination is made with input from the TARC, Tribe, and urban Indian organizations that an individual is not suitable to continue to serve on the TARC. Breach of confidentiality or violations of the tenets of ICWA are cause for removal. If a member is found to act in a manner that is in contradiction to the intent and/or purpose of the TARC, their seat is immediately vacated. The President shall be responsible for the termination of the TARC member.

Sec. 04.10.004 Mandatory Training and Orientation of TARC Members

- A. The Department shall provide training and orientation to TARC members in the following areas:
 1. Registration process. Each member will complete the Application for Advisory Body Appointment for the Tribal Administration Review Commission.
 2. Confidentiality. Each member will receive a verbal review of confidentiality issues, as well as a written review of the confidentiality. Each member's signature on the application indicates a commitment to the maintenance of confidentiality.
 3. Alaska Tribal-State Agreement
 4. Department programs and process.
 5. Indian Child Welfare Act, PL 95-608
 6. Requirements of Title IV-B, PL 96-272
 7. Requirements of the Indian Child Protection Act, PL 101-630
 8. Requirements of the Adoption and Safe Families Act, PL 105-89
 9. Other state or federal laws applicable to involuntary Indian child custody proceedings.

- B. When available, ensure TARC members are included in Department and other ICWA trainings related to the delivery of ICWA services, i.e., Alaska Family & Youth Services Training Academy distance training opportunities and other regional trainings sponsored by Indian programs.

Sec. 04.10.005 Cases Mandated For TARC Review

- A. Subject to the criteria in AR 1.06 the TARC will review only those cases in dispute in which the permanent placement plan is to terminate parental rights, pursue guardianship, maintain a child in long-term foster care placement, or pursue an adoptive placement.
 - 1. These cases shall be reviewed for compliance with tribal, state and federal mandates.
 - 2. Prior to approving placement of a tribal child with a family, the family caseworker shall make every attempt through a relative search to follow the minimum federal standards established by the Indian Child Welfare Act and all other applicable state and federal laws.
 - 3. The permanent placement plan is reviewed by the Department and the Tribal Position is recommended to the Alaska Division of Family and Youth Services, the authorized Alaska child placement agency.

Sec. 04.10.006 Criteria for Request for Review

- A. A parent and or a relative of an Indian child who is the subject of an involuntary child custody proceeding must request an administrative review of a Department position in a permanency plan by submitting a written request to the department, within ten (10) days of the Department issuing or stating a tribal position in a permanent placement.
- B. The written request shall:
 - 1. Declare the relationship to child
 - 2. Provide a brief history of involvement with the child
 - 3. Identify the finding(s) or recommendation(s) they disagree with
 - 4. State the basis for the request
 - 5. State alternative recommendation(s) sought in the review
- C. The request for administrative review must involve an involuntary Indian child custody proceeding that falls within the jurisdiction of the CCTHITA ICWA Program.

Sec. 04.10.007 TARC Procedure

A. Procedure of TARC

1. Upon receiving a written request for an administrative review of a Department position, subject to the criteria in AR 1.06 above, the Department shall forward the request and a case summary to the TARC.
2. The TARC panel shall convene within ten (10) working days of receipt of a written request.
3. A quorum shall consist of three (3) TARC members for permanency planning cases. If a quorum is not available in response to the notice, the next member shall be contacted.
4. The TARC shall ensure the confidentiality of all proceedings and records conducted under this chapter.
5. All those present shall sign a Confidentiality Agreement prior to the start of the Review.

B. Hearing

1. The Chairperson of the review opens the meeting with an instruction that members are to declare relationships or involvements the case is presented.
2. The TARC will hear the parent or family member's reasons for requesting the review and question the parent or family member if clarification is required.
3. The TARC will hear the Family Caseworker's reasons for forwarding the tribal position which is the source of disagreement, and question the Family Caseworker if clarification is required.
4. The TARC will review the points of disagreement outside the presence of the two groups presenting their positions. If the TARC does not agree with the Department position in the matter, the TARC will document any recommendations made by the Review Panel clearly on a TARC Review form.
5. The TARC shall issue a written statement to the parent or relatives and the Department within five (5) working days of hearing the request for review, either affirming the Department's position or recommending an alternative placement, identifying evidence not previously considered by the Department.

6. If the TARC members cannot reach agreement in the matter, the majority of members may vote to move to the impasse procedure under THTC 04.05.060.

Sec. 04.10.008 Who Can Attend an Administrative Review

- A. The Department staff responsible for the permanency plan.
- B. The person or persons submitting the written request.
- C. The parent(s) of the child involved in the permanent placement
- D. Child(ren), usually over 13 years of age, depending on the maturity of the child.
- E. The parent(s) of the child involved in the permanency plan
- F. All appointed TARC members.
- G. Other resources persons necessary for additional information.

Sec. 04.10.009 Relationships and Conflicts of Interest

- A. TARC members who are expressly familiar, related, or involved in another capacity with the parties being reviewed shall state their role/relationship prior to the review TARC Commissioners shall remove themselves from consideration for selection to the TARC panel if:
 1. They are related (up to the specified degree of second cousin).
 2. They work for an agency providing placement or services to the family.
 3. Upon discussion, it is determined that they are in an advocacy role with one or more individuals in the family.

Sec. 04.10.010 Staffing Protocol

- A. The ICWA Program Supervisor screens all cases meeting the criteria in Sec. 04.10.006, above and requests the TARC review for each case.
- B. The Family Caseworker provides the written case summary to the TARC panel describing the tribal finding and or recommendations regarding the permanent plan for the child and how the tribal position was determined prior to review.

- C.** The child's tribal case file shall be available at the review, including: all psychological reports, all medical reports, counseling reports, police reports, pictures, verification of tribal membership, and all legal documents and court reports.
- D.** The written case summary must have the supervisor's signature indicating the supervisor concurs with the presented permanent plan.
- E.** The Department support staff will make at least three (3) copies of the case summary, the written request from the child's parent or family member, and distribute them for review to those present.