

Chapter 10.10

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Prior legislation: Resos. 04-R-32, 05-R-13, 08-R-101.

Article I. Purpose and Placement Preferences

10.10.010 Purpose.

The Karuk Tribe's Tribal Court, when exercising jurisdiction under this Code, shall be known as the "Children and Family Court," or, alternatively, "the Tribal Court."

This Code shall be liberally construed and interpreted to fulfill the following purposes whenever possible:

- (A) To secure, for each child coming before the Court, the care, guidance, protection and control needed to continue placement in her or his own home where possible, and to serve the welfare and the best interests of the child, the family, and the Karuk Tribal community;
- (B) To preserve and strengthen the unity of the Karuk family, preferably by only separating children from their parents or siblings when absolutely necessary;
- (C) To preserve and strengthen each child's Tribal, cultural, or ethnic identity whenever possible;
- (D) To take such actions that may be necessary and feasible to prevent the abuse, neglect or abandonment of children;
- (E) To provide a continuum of services for children and their families, with emphasis whenever possible on early intervention, prevention and community-based alternatives;
- (F) To secure the rights and ensure fairness to children, youth, parents, guardians, custodians or other parties who come before the Court; and
- (G) To provide a non-adversarial forum for culturally appropriate resolution of child and family welfare issues coming before the Tribal Court. [Res. 09-R-062 Title 1 § (1)(A), 4/30/2009.]

10.10.020 Tribal placement preferences.

In the event a child falling under the Tribal Court's jurisdiction is placed outside the child's home and such placement can secure the best care, guidance, and control for the child, the Tribe hereby establishes the following placement preferences, in order of preference:

- (A) A member of the child's immediate family, according to Tribal laws, customs, and traditions.

- (B) A member of the child's extended family, according to Tribal laws, customs, and traditions.
- (C) Another member of the child's Tribe.
- (D) Another Indian family, including an Indian foster home licensed or approved by any federally recognized Indian tribe and approved by the Tribe.
- (E) An institution for children licensed or approved by the Tribe or operated by an Indian organization that has a program suitable to meet the child's needs.
- (F) A non-Indian foster home located on or near Tribal lands and licensed or approved by the Tribe.
- (G) A non-Indian foster home located off Tribal lands and licensed or approved by any federally recognized Indian tribe and approved by the Tribe.
- (H) Any other foster family home licensed or approved by the Tribe.
- (I) A home certified by a California licensed foster family agency.

Within each placement preference category, preference shall be given to a placement on or nearest Tribal lands. The Tribal Court shall apply these placement preferences in all proceedings pursuant to this Code and no deviation from these preferences shall be made without a finding of good cause.

[Res. 09-R-062 Title 1 § (1)(B), 4/30/2009.]

Article II. Definitions

10.10.030 Definitions.

Abandoned. The Court may make a determination that an infant or child is abandoned if: (1) the child has been left without any provision for support; (2) physical custody of the child has been voluntarily surrendered pursuant to relevant state safely surrendered baby laws and the child has not been reclaimed within fourteen (14) days of surrender; (3) the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child; (4) a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful; or (5) the parent or guardian of the child willfully abandoned the child, and the Court finds that the abandonment itself constituted a serious danger to the child. For the purposes

of this definition, "serious danger" means that without the intervention of another person or agency, the child would have sustained severe or permanent disability, injury, illness, or death, and "willful abandonment" shall not be construed as actions taken in good faith by the parent without the intent of placing the child in serious danger. An Indian child will not be deemed to be abandoned simply because a parent leaves the child in the care and custody of an Indian custodian unless the parent demonstrates an intent to abandon the child.

"Adoption" means a permanent legal status, including a customary adoption, with a change in legal parents that is designed to ensure permanency for children while maintaining meaningful contact with biological parents, extended Tribal relatives, and their Tribal community.

"Child abuse or neglect" means, at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm or endangerment to a child.

"Child custody proceeding" means all proceedings, whether voluntary or involuntary, involving a child or youth subject to the Tribal Court's jurisdiction.

"Enters foster care" means the earlier of the date of the first judicial finding by any court that the child has been subjected to abuse or neglect; or the date that is sixty (60) days after the date on which the child is removed from the home.

"Foster care" means the twenty-four (24) hour substitute care provided for a child who is removed by court order or a voluntary placement agreement from his or her home and for whom the Tribe has responsibility for placement and care.

"Guardianship" means 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 relationship.

"Modification of parental rights" means changing the rights and obligations of the parent or guardian of the child against whom the order of modification is entered and of the child who is the subject of the petition to that parent or guardian, to a lesser extent than fully terminating and severing such rights and obligations.

“On or near tribal lands” includes all lands on or near the Karuk Aboriginal Territory as set forth in the Tribe’s Constitution, service areas, and all lands subsequently and hereafter acquired by and for the Tribe, whether within or outside of the Tribe’s Aboriginal Territory.

“Qualified Individual” means a trained professional or licensed clinician who is not an employee of Karuk Child Welfare Services and who is not connected to, or affiliated with, any placement setting in which children are placed by Karuk Child Welfare Services.

“Reasonable efforts” means with respect to a given obligation, the efforts that a reasonable person in that position would use so as to perform that obligation as expeditiously as possible. Reasonable efforts determinations are made on a case-by-case basis, weighing factors such as: (1) whether the child’s health or safety have been compromised had Karuk Child Welfare Services (“KCWS”) attempted to maintain him or her at home; (2) whether the service plan was customized to the individual needs of the family or whether it was a standard package of services; (3) whether KCWS provided services to ameliorate factors present in the child or parent, i.e., physical, emotional, or psychological, that would inhibit a parent’s ability to maintain the child safely at home; (4) whether limitations exist with respect to service availability, including transportation issues, and if so, what efforts KCWS undertook to overcome these obstacles; and (5) whether KCWS’s activities associated with making and finalizing an alternate permanent placement consistent with the permanency goal.

“Relative” includes extended family members, as shall be as defined by the law or custom of the Tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen (18) and who is the child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or step-parent.

“Short-Term Residential Treatment Program” means a program that has a registered licensed nursing staff and other licensed clinical staff available twenty-four (24) hours a day, seven (7) days a week who provide care on site according to a trauma informed treatment model, licensed by the State of California, and accredited by any of the following independent, not for profit organizations: (1) the Commission on Accreditation of Rehabilitation Facilities; (2) the Joint Commission on Accreditation of Healthcare Organizations; (3) the Council on Accreditation; (4) any other independent, not-for profit accrediting organization approved the Secretary of Health and Human Services.

“Termination of parental rights” means permanently changing a parent’s rights, which shall have the effect of severing forever all legal rights and obligations of the parent or guardian of the child against whom the order of termination is entered and of the child who is the subject of the petition to that parent or guardian.

"Tribe" means the Karuk Tribe.

Additional definitions and obligations for child custody proceedings applicable to Title IV-E-eligible children only are found in the Title IV-E intergovernmental agreement between the California Department of Social Services and the Karuk Tribe, and in the KCWS Plan.

In this Code, the words "child" and "youth" are used interchangeably, and both mean unmarried minors under eighteen (18) in need of care; however, in this Code "youth" generally refers to such minors between the ages of ten (10) and eighteen (18), and, for Independent Living Program services, minors who are fourteen (14) through twenty-one (21) years old. [Res. 09-R-062 Title 1 § 2, 4/30/2009.]

Article III. Jurisdiction and Case Transfers

10.10.040 Tribal Court jurisdiction.

(A) The Children's Division of the Tribal Court shall have jurisdiction over children, their parents, guardians, legal custodians and Indian custodians and all necessary members of the household involved in any child custody proceeding governed by this Code. Unless the Tribal Court discharges the child, the Court for cause shown, may reopen the case at any time and take such action with respect to a child, as it deems appropriate.

(B) The Tribal Court shall have jurisdiction over children and youth in need of care, which includes any unmarried child under the age of eighteen (18) years, or an eligible youth aged eighteen (18) to twenty-one (21) who has exhibited a pattern of behavior that poses a serious risk of harm to himself, herself or others, or whose parent, guardian, legal custodian, or Indian custodian has:

- (1) Abandoned him or her;
- (2) Subjected him or her to mistreatment or abuse, whether physical, emotional or sexual;
- (3) Failed to protect him or her from such mistreatment or abuse; or
- (4) Failed or refused to provide proper or necessary subsistence, medical care, shelter, a safe environment, or any other necessary care for his or her health, guidance, or well-being.

(C) The Tribal Court shall have jurisdiction in child custody proceedings concerning any child of a member of the Tribe who may be properly brought before the Court.

(D) The Tribal Court shall have jurisdiction in proceedings concerning any Indian child of another tribe, so long as the governing body or other duly authorized entity of such tribe has validly consented in writing to the Tribal Court's exercise of jurisdiction, such consent has been filed with the Tribal Court, and jurisdiction is accepted.

(E) The jurisdiction of the Tribal Court shall be civil in nature and shall include the right to issue all orders necessary to ensure the safety of children that come before the Court as well as those who have been declared to be subject to the jurisdiction of the Tribal Court. The Tribal Court shall also have the power to impose fines, issue and enforce subpoenas, and issue and enforce stay away, contempt, protection, and detention orders and any other orders as appropriate.

(F) *Concurrent Jurisdiction.* The jurisdiction invoked by this Code over any person, cause of action, or subject may be concurrent with any valid jurisdiction over the same of the courts of the United States, any Indian tribe, any state, or any political subdivision thereof. In the event of concurrent jurisdiction controversies, the Tribal Court shall compel and hear sufficient evidence and legal arguments to make a prompt jurisdictional determination for each such controversy.

(G) The Tribal Court may decline to exercise its jurisdiction if it finds any of the following exist:

- (1) Another court has the jurisdiction to hear the case and it would be more convenient for the parties than the Tribal Court;
- (2) One (1) or more of the parties objects to the jurisdiction and is not a person over whom the Tribal Court may properly exercise its jurisdiction; or
- (3) The case is of such a nature that the Tribal Court declines to hear it. [Res. 09-R-062 Title 1 § (3)(A), 4/30/2009.]

10.10.050 Transfer of jurisdiction to Tribal Court.

A Karuk Tribal Court judge is authorized to 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.

(A) 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.

(B) Upon issuance of a Tribal Court order accepting transfer of jurisdiction, the transferring court must transfer the case absent good cause to deny the transfer. Both courts must approve of the transfer. [Res. 09-R-062 Title 1 § (3)(B), 4/30/2009.]

10.10.060 Transfer from Tribal Court to state or other tribal court.

(A) In any proceeding before the Tribal Court, any interested party may petition to transfer the proceedings to an appropriate state or another tribal court where the state or other tribe has a significant interest in the child and the transfer would be in the best interests of the child and the child's tribe.

(B) If the Tribal Court determines that transfer to another tribal or state court is in the best interest of the child, the Court shall transmit all legal court documents and records filed with the Court or certified copies thereof, to the receiving court. [Res. 09-R-062 Title 1 § (3)(C), 4/30/2009.]

10.10.070 Intergovernmental relationships and full faith and credit.

(A) *Policy.* It is the policy of the Karuk Tribe to encourage cooperation and the formation of agreements between the Tribe and any tribal, state, federal, county, or nongovernmental organization that can assist in providing care and support to children. It is also the policy of the Karuk Tribe to ensure that other governments and agents of those governments respect its sovereign status and the jurisdiction of its Tribal Court.

(B) *Agreements.* The Karuk Tribe may enter into such intergovernmental agreements with federal agencies, states and their political subdivisions, and Indian tribes, as it deems appropriate for the provision of care to children in need of care, the orderly transfer of cases between jurisdictions and division of jurisdictional authority over children subject to the Children and Family Code (this title).

(C) *Full Faith and Credit.* State court orders involving children under the jurisdiction of the Tribal Court may be recognized by the Court only after a full independent review of such state proceedings has determined that:

- (1) The state court had jurisdiction over the child;
 - (2) The applicable provisions of the Indian Child Welfare Act and other applicable laws were properly followed;
 - (3) Due process was provided to all interested persons participating in the state proceeding; and
 - (4) The state court proceeding did not violate the public policies, customs or common law of the Karuk Tribe.
- (D) Court orders of other tribal courts involving children and families over whom the Tribal Court may take jurisdiction shall be recognized by the Court after the Court has determined that:
- (1) The other tribal court exercised proper subject matter jurisdiction and personal jurisdiction over the parties; and
 - (2) Due process was accorded to all interested parties participating in the other tribal court proceeding;
 - (3) The tribal court proceeding did not violate the public policies, customs or common law of the Karuk Tribe. [Res. 09-R-062 Title 1 § (3)(D), 4/30/2009.]

10.10.080 Intervention under the ICWA.

The governing body of the Tribe shall be authorized to intervene on behalf of the Tribe in all state court proceedings that implicate the ICWA and involve a child subject to the Tribal Court's jurisdiction, whether or not enrolled. The Tribe shall intervene in such matters unless such intervention would be impracticable under the circumstances of the case. [Res. 09-R-062 Title 1 § (3)(E), 4/30/2009.]

Article IV. Actions of the Tribal Court

10.10.090 General authority.

Upon a sworn affidavit by a law enforcement officer or any other person, and upon the examination of other witnesses if required by the judge that there is probable cause to believe that a child is being or has been abused, neglected, or is in need of care as defined herein and is within the jurisdiction of the Court, the Court shall make such orders for the removal, custody, protection and care of the child. The Court shall additionally take such other actions as it may deem advisable and appropriate in the interest of the child and the interests of the Tribe, including protection orders related to domestic or family violence. [Res. 09-R-062 Title 1 § (4)(A), 4/30/2009.]

10.10.100 Custody of child pending hearing.

Pending final disposition of the case, the child shall be subject to the order of the Court and may be permitted to remain in the control of parents, guardians, persons having his or her custody, child welfare or probation office, or he/she may be ordered to remain in an appropriate placement provided by the Tribe or designated by the Court. [Res. 09-R-062 Title 1 § (4)(B), 4/30/2009.]

10.10.110 Medical care and examinations.

The Tribal Court may order necessary medical examinations and care as may be required for children under its jurisdiction. [Res. 09-R-062 Title 1 § (4)(C), 4/30/2009.]

10.10.120 Judgment for support.

The Tribal Court may, by order, direct the person or persons required by law to support the child to pay for the support of the child in such amount as the Court may determine to be fair and reasonable, including the cost of the temporary placement of the child pending hearing. Such orders shall have the force and effect of judgment for money and shall be enforceable as are other judgments for money.

Where appropriate, the Tribal Court shall also order the child's social worker to make a child support referral to the appropriate child support agency for the purpose of securing assignment to the state of any rights of support of each child receiving foster care maintenance payments pursuant to Title IV-E, unless there is documentation that such referral would not be in the best interests of the child.

Circumstances that may be considered in the evaluation of whether the child support referral is not in the best interest of the child may include, but are not necessarily limited to, the parent(s)' employment status, housing status, the impact on other children who may be at risk of removal, availability of community-based services, efforts to reunify, whether parental rights have been terminated, connection with Cal Works or other public assistance programs and, whether payment of child support will pose a barrier to family reunification or successful outcome of the child's case plan. [Res. 09-R-062 Title 1 § (4)(D), 4/30/2009.]

10.10.130 Removal from Tribal lands.

The Court may permit removal of a child or youth in need of care from Tribal lands by the person or institution in whose physical custody the child is given on condition that such custodian will return the child on order of the Tribal Court. [Res. 09-R-062 Title 1 § (4)(E), 4/30/2009.]

Article V. Records of the Karuk Tribal Court

10.10.140 Caption headings.

The captions for all child welfare actions shall be titled "In re the Matter of (child's initials), a Minor." [Res. 09-R-062 Title 1 § (5)(A), 4/30/2009.]

10.10.150 Court records.

The Court shall maintain a confidential record of all proceedings under this Code in records labeled "Records of the Karuk Tribal Court." The confidential records of proceedings under this Code shall not be open to public inspection absent an order from the Court. [Res. 09-R-062 Title 1 § (5)(B), 4/30/2009.]

Article VI. Karuk Child Welfare Services

10.10.160 Duties.

The Karuk Tribe's Child Welfare Services ("KCWS") social workers shall have the following powers, duties, and responsibilities:

- (A) Process all Indian Child Welfare Act ("ICWA") notices sent to the Tribe, assist the Tribe in intervening in child custody proceedings, and assist the Court in petitioning for transfer of child custody proceedings to the Court where appropriate.
- (B) Be present in Court when cases are heard concerning children subject to the Tribal Court's jurisdiction and provide the Court with information and assistance as it may require.
- (C) Receive, respond to and investigate reports of suspected child abuse and neglect involving children subject to the Tribal Court's jurisdiction.
- (D) Subject to the Tribe's confidentiality policies, receive referral information, conduct intake inquiries, and determine whether to initiate child welfare proceedings.
- (E) Determine whether a child subject to the Tribal Court's jurisdiction should be removed for reasonable cause to believe that child is in immediate danger of physical or sexual abuse or the physical environment poses an immediate threat to the child's health or safety after considering whether there are any reasonable services which, if provided to the child's parent, legal guardian, Indian custodian, or to the minor, would eliminate the need to remove the minor from the custody of his or her parent, legal guardian or Indian custodian.
- (F) Make child abuse and neglect reports or referrals of cases to other agencies and share information with other agencies if their assistance appears to be needed or desirable.
- (G) Make a placement and services report and recommendation to the Court in child welfare proceedings, including a plan of rehabilitation, treatment, and care.
- (H) Locate and approve prospective foster parents and their homes as meeting approval requirements under this Code for foster care placement of children under the Court's jurisdiction.

- (I) In the approval of prospective foster care or adoptive placements, commence and secure criminal record and child abuse clearances of prospective adoptive or foster care providers and of adult household members.
- (J) Supervise and assist children subject to the Tribal Court's jurisdiction pursuant to child welfare dispositions, offer family counseling, and make an affirmative effort to obtain necessary or desired services for the child subject to the Tribal Court's jurisdiction and the child's family.
- (K) Accept legal custody and the care and placement responsibility of children subject to the Tribal Court's jurisdiction when ordered by the Tribal Court.
- (L) Initiate petitions for the modification of parental rights or investigate and report to the Tribal Court on petitions to modify parental rights brought by others.
- (M) If specifically authorized by the Tribal Council, retain counsel to assist in carrying out these duties and to represent the Tribe in special matters relating to this Code.
- (N) Develop case plans and conduct case plan reviews pursuant to placement and service orders.
- (O) Negotiate agreements for services, information sharing, referral, and funding for child welfare services pursuant to placement and service orders.
- (P) Provide measures and procedures for preserving the confidential nature of child welfare services records within the Child Welfare Services office.
- (Q) File and mail such reports as may be required by this Code.
- (R) Perform all other duties and responsibilities regarding all child custody matters, in accordance with Tribal laws, customs and traditions, and pursuant to the instructions or order of the Court in matters related to this Code. [Res. 09-R-062 Title 1 § (6)(A), 4/30/2009.]

10.10.170 Use of other Tribal resources.

- (A) In carrying out its powers, duties, and responsibilities under this Code, KCWS may use, and is encouraged to make liberal use of, the psychiatric, psychological, therapeutic, counseling, and other social services available to the Tribe, both from within and outside the Tribe. Child Welfare Services shall be required to identify and use qualified Tribal or other resources, if available and appropriate.

(B) The Court may order the provision of psychiatric, psychological, or therapeutic counseling, or other social services by an appropriate department or employee of the Tribe or other qualified agency in any proceeding under this Code. [Res. 09-R-062 Title 1 § (6)(B), 4/30/2009.]

Article VII. Indian Child Welfare Committee

10.10.180 Role and guidelines.

The Indian Child Welfare (ICW) Committee shall assist the Tribal social workers in an advisory role and bring pending matters before the Tribal Council as set forth in that Committee's policies and guidelines. The ICW Committee Guidelines shall contain provisions pertaining to the strict confidentiality of children's and criminal history records. [Res. 09-R-062 Title 1 § 7, 4/30/2009.]

Article VIII. Duty to Report Child Abuse and Neglect

10.10.190 Duty.

Any person who has a reasonable cause to suspect that a child has been abused, neglected, abandoned, or is otherwise in need of care, shall immediately report the abuse, neglect or abandonment to KCWS. Those persons reporting may remain anonymous. [Res. 09-R-062 Title 1 § (8)(A), 4/30/2009.]

10.10.200 Mandatory reporters.

Those persons who are mandated to report suspected child abuse or neglect to the proper authorities include KCWS staff, any physician, nurse, dentist, optometrist, or any other medical or health professional; school principal, school teacher, or other school official; social worker, child day care center worker, or other child care staff including foster parents, residential care or institutional personnel; counselor; peace officer or other law enforcement official; judge, attorney, court counselor, Advocate, Clerk of the Court, or other officers of the Court or judicial system officials. [Res. 09-R-062 Title 1 § (8)(B), 4/30/2009.]

10.10.210 Immunity.

All persons or agencies reporting, in good faith, known or suspected instances of abuse or neglect shall be immune from civil liability and criminal prosecution for such good faith reporting. [Res. 09-R-062 Title 1 § (8)(C), 4/30/2009.]

Article IX. Case Plans and Evidence

10.10.220 Case reports and plans.

The Tribal Court, in conjunction with KCWS or other agency designated by the Court shall develop a case plan in all cases.

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

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

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

- (A) Be a written document that is a discrete part of the case record, in a format determined by the Tribe, which is developed jointly with the parents or guardian(s) of the child;
- (B) Be developed within a reasonable period, but no later than sixty (60) days from actual removal of the child;
- (C) Development of the case plan shall engage family members and the child as appropriate for their age and development. Children twelve (12) years of age or older shall have the opportunity to review, sign and have a copy of their case plan. Children fourteen (14) years of age or older shall be involved in the development of their case plan, including their Independent Living Plan and their Permanency Plan.

(D) Include a description of the services offered and the services provided to maintain the family, prevent removal of the child from the home, and if already removed, to reunify the family, including a description of the appropriateness of the services offered and provided to the child and family;

(E) Include a description of the home or institution in which the child is placed;

(F) Include a discussion of the safety and the appropriateness of the placement and other services provided to the child and include a plan for assuring that the child receives safe and proper care;

(G) Include a discussion of the services provided to the parent(s) in order to improve the conditions in the parent(s)' home to facilitate the child's return to his or her own home, or for providing another permanent placement for the child;

(H) Include a plan for assuring that services are provided to the child and foster parents in order to address the needs of the child while in foster care;

(I) For a child, aged 16 years of age or older, for whom another planned permanent living arrangement has been determined as the permanency plan: (1) a description of the steps KCWS is taking to ensure the child's foster family home or child-care institution is following the reasonable and prudent parent standard including whether the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities; (2) a description of the steps KCWS is taking to return the child home or secure a placement for the child with a fit and willing relative, a legal guardian or an adoptive parent; and (3) a description of the compelling reason that it would not be in the best interest of the child to return home, be placed for adoption or legal guardianship or with a fit and willing relative.

(J) For a child for whom legal guardianship has been determined as the permanency plan: (1) the steps KCWS has taken to determine it is not appropriate for the child to be returned or adopted; (2) the reasons for any separation of siblings during placement; (3) the reasons why permanent placement with a fit and willing relative or nonrelative are in the child's best interest; (4) the efforts KCWS has made to discuss adoption by the child's foster parents as a more permanent alternative to legal guardianship; and (5) the reasons why the foster parent has not chosen to pursue adoption; and (6) the efforts KCWS made to discuss with the child's parent the kinship guardianship assistance arrangement or if this is not done why the efforts were not made.

(K) Where appropriate, for a child fourteen (14) years of age or older, include a written description of the programs and services that will help such child prepare for the transition from foster care to independent living that includes; (1) a description of the rights of the child with respect to education,

health, visitation, court participation, the rights to health and education records and the right to stay safe and avoid exploitation. (2) a signed acknowledgment by the child that the child was provided a copy of the child's rights and these rights were explained in such a way that the child understands their rights. (3) A description of the youth's current level of functioning, the youth's emancipation goals; the progress toward achieving the goals in the ILP; the programs and services needed to help the youth achieve the goals; and identifies the individuals assisting the youth to accomplish the ILP goals.

(L) In the case of a child between the ages of seventeen and a half (17 1/2) and twenty-one (21) who will exit foster care within the next 90-day period, the case plan shall include a 90-day transition plan that includes: (1) a discussion of options on housing, health insurance, education, local opportunities for mentors, continuing support services, extended foster care program benefits, work force supports and employment services. (2) Information regarding health care treatment decisions and the importance of designating another individual to make health care treatment decisions on behalf of the child if the child becomes unable to participate in such decisions and does not have, or does not want, a relative who would otherwise be authorized under Tribal law to make such decisions. (3) the plan shall provide the child with the option to execute a health care proxy, or other similar document recognized under Tribal law, and is as detailed as the child may elect.

(M) In the case of a child with respect to whom the permanency plan is an adoption, or placement in another permanent home, document the steps KCWS is taking to find an adoptive family or other permanent living arrangement for the child. At a minimum, such documentation shall include child specific recruitment efforts used by KCWS such as the use of state, regional, and national adoption exchanges including electronic exchange systems to facilitate orderly and timely in-state and interstate placements;

(N) Discuss how the case plan is designed to achieve placement in a safe setting that is the least restrictive (most family-like) setting available, that is in close proximity to the home of the parents when the case plan goal is reunification, and is consistent with the best interest and special needs of the child;

(O) If the child has been placed in a Short-Term Residential Treatment Program the case plan shall include: (1) a description of the child's Permanency Team including the individuals who comprise the team, the contact information for those who comprise the team, and the contact information for other family members and important persons to the child who are not part of the team; (2) a description of the efforts KCWS has made to facilitate meetings of the Permanency Team including making those meetings accessible in time and place; (3) a description of how the parent or legal

guardian of the child was included in the selection of the members of the Permanency Team; (4) a description of the ongoing assessment conducted on the strengths and needs of the child, how the Permanency Team was involved in the assessment, and how that assessment supports the determination that the needs of the child cannot be met by the family or through placement in a foster family home (a shortage or lack of foster family homes shall not be an acceptable reason); (5) a description of how the placement in a Short-Term Residential Treatment Program provides the most effective and appropriate level of care for the child in the least restrictive environment; (6) a description of how the placement in a Short-Term Residential Treatment Program is consistent with the short- and long-term goals of the child as specified in the permanency plan for the child; (7) a description of the specific treatment or service needs that will be met for the child in placement and the length of time the child is expected to need the treatment or services; (8) a description of the efforts made by KCWS to prepare the child to return home or to be placed with a fit and willing relative, a legal guardian or in a foster family home; (9) a description of the placement preferences of the family and the permanency team that recognizes that children should be placed with their siblings; (10) for a child who is not placed according to the placement preferences of the Permanency Team, a description of why the recommendation of the qualified individual and the placement of the child did not follow the placement preferences of the family; and (11) the signature of the KCWS Operations Administrator authorizing the continued placement of the child in the Short-Term Residential Treatment Program.

(P) If the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parent(s), or in a different state, set forth the reasons why such placement is in the best interest of the child;

(Q) If the child has been placed in foster care in a state outside the state in which the child's parent(s) are located, assure that an authorized caseworker visits the foster home or institution no less frequently than once per month, and submits a report on the visit to the Karuk Tribe Child Welfare Services;

(R) To the extent available and accessible, incorporate the health and education records of the child, including:

- (1) The names and addresses of the child's health and educational providers;
- (2) The child's grade level performance;
- (3) The child's school record;

- (4) Assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;
 - (5) A record of the child's immunizations;
 - (6) The child's known medical problems;
 - (7) The child's medications; and
 - (8) Any other relevant health and education information concerning the child determined to be appropriate by the Karuk Tribe Child Welfare Services; and
- (S) Provide that a child's health and education record (as described above) is reviewed and updated, and supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care and is supplied to the child at no cost at the time the child leaves foster care if the child is leaving foster care by reason of having attained the age of majority under state law. [Res. 09-R-062 Title 1 § (9)(A), 4/30/2009.]

10.10.230 Evidence.

The Karuk Tribe's Rules of Evidence shall be followed. However, generally, where the Tribe's rules are silent as to a particular evidentiary issue, the federal rules of evidence may be followed. The exception to these rules is that hearsay evidence shall be admissible in proceedings under this Code, except that a finding of fact cannot be supported by hearsay alone. [Res. 09-R-062 Title 1 § (9)(B), 4/30/2009.]

10.10.240 Confidentiality.

All matters under this Code shall be confidential and heard in closed Court, excluding all persons except parents, guardians, foster parents, the attorney for the child, witnesses called by the Court, the Advocate, Tribal social workers and with the permission of the Court others having a direct interest in the matter. Confidential KCWS records shall only be released to others by Court order, and the purpose for releasing such records must meet the confidentiality criteria set forth in [25](#) C.F.R. Section [205.50](#) prior to such release. [Res. 09-R-062 Title 1 § (9)(C), 4/30/2009.]

Article X. Representatives for Minors

10.10.250 Appointment of representative.

If the proceeding necessitates the removal of a child, the Tribal Court will appoint a Court Appointed Advocate (Advocate) to represent the child, and may appoint a guardian ad litem or attorney on behalf of the child depending on the circumstances of and availability of funding for such appointment in the case. [Res. 09-R-062 Title 1 § (10)(A), 4/30/2009.]

10.10.260 Advocate qualifications and duties.

(A) A "Court Appointed Advocate" is a person who has been screened, selected, and trained, in accordance with Tribal Standards who is being supervised and supported by a Tribal Court Advocate Program approved by the Tribe, and who has been appointed by the Court as a sworn officer of the Court to advocate for the best interests of the child in Tribal Court proceedings.

(B) Advocates must be duly qualified and appointed pursuant to the Advocate program guidelines and policies adopted by the Karuk Tribe prior to working on any case and receiving confidential information.

(C) The Tribe Human Resources Department adhere to strict screening of Advocates, which shall include personal interviews, reference checks, check of records of sex offences and other criminal records, information from the Department of Motor Vehicles, and other information as the Tribal Council deems appropriate.

(D) Each Advocate 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 Tribal Court Appointed Advocates.

(E) A tribal court judge, associate judge, or commissioner shall swear in each Advocate before being allowed to begin his or her duties. [Res. 09-R-062 Title 1 § (10)(B), 4/30/2009.]

Article XI. Peacemaker Mediation Forum

10.10.270 Peacemaker Mediation Forum

(A) Because of the Tribe's preference for a non-adversarial approach to resolution of internal conflicts involving the Tribe's children and families, the Tribal Court judge, at any stage of the proceedings under this Code, may order the relevant parties to participate in the Tribe's confidential Peacemaker Mediation Forum. Mediations so ordered shall be conducted pursuant to the Karuk Tribe's Peacemaker Mediation Forum's written guidelines.

(B) Additionally, the Tribal Court judge may order the child's family to participate in family unity, to provide the child's family with an opportunity to establish a plan in conjunction with Karuk Child Welfare Services, family, friends and other relevant professionals that will ensure the safety of the child. Family unity shall be conducted and facilitated according to that program's written guidelines. The Children and Family Code recognizes a preference for family decision-making opposed to judicial intervention and determination, thereby encouraging families to take seriously the issues with which they are presented.

(C) Once the parties have reached a mediated/facilitated services plan for the family, the plan shall be presented to the Tribal Court judge who shall review the plan, listen to any argument by any of the professionals or family members involved in the case, and shall approve, modify, or disapprove of the plan.

(D) If the judge disapproves the plan, the judge may send the family back for an additional conference, family unity or mediation, or may set the case for hearing. If the judge approves the plan, he or she shall convert the plan, including any judicial modifications, into a valid Tribal Court order.

[Res. 09-R-062 Title 1 § (11)(A), 4/30/2009.]

Article XII. Guardianships

10.10.280 Purpose.

A guardianship for the person and/or property of a child may be a preventative measure to eliminate the need for the filing of a Youth in Need of Care petition, an option for a permanent placement in cases where a Petition was filed and reunification was unsuccessful, and/or a placement when needed to protect the best interests of a child that the court has jurisdiction over.

10.10.290 Types of guardianship.

The types of guardianship shall include guardianship of property and/or guardianship of the person.
[Res. 09-R-062 Title 1 § (20)(B), 4/30/2009.]

(A) *Guardianship of the Person.*

The Court may appoint a guardian to be responsible for the care and custody of a child. The Guardian shall have legal and physical custody of the child, however, shall not have control over the child's property unless a Guardianship of Property is also granted. Guardianship provides for custody of a child to someone other than the parent(s), although there is no modification of the parental rights of the parents.

(B) *Guardianship of Property.*

The Court may appoint a guardian over the property of a child if necessary, and under such terms and conditions, as the Court deems appropriate. The guardian shall not have the authority without express written consent of the Court, to dispose of any real or personal property of the child in any manner, including, but not limited to, the child's Individual Indian Money Account. The terms and conditions of the guardianship over a child's property shall be set forth in the Court's written order. Possible Terms of the guardianship include:

- (1) The guardian must post a bond in the amount set by the Court;
- (2) The guardian must to complete an inventory of any pf the child's property or money received and return the property at the time ordered by the Court;

- (3) The guardian must dispose of and manage the estate according to laws and for the best interests of the child;
- (4) The guardian must faithfully discharge their duties in relation to the child's best interests, and in relation to the care, custody and education of the child;
- (5) The guardian must render an account of the child's property and money, all the proceeds or interests derived from the property and money, and of the management and disposition of the same, within three (3) months after the appointment, and at such other times as the Court directs;
- (6) At the expiration of the trust, the guardian must settle all accounts with the Court or Judge or with the child if they are of full age, or the legal representative, and to pay over all of the child's finds and turn over all of the child's property;
- (7) The guardian may use the child's funds solely for the support and education of the child and the funds shall only be expended by the guardian in a reasonable manner according to the circumstances and station in life of such child, and in such manner as can reasonably be afforded according to the income and estate of said child; and/or
- (8) the child's property may not be used for the child's care, but rather to be managed for the child until they reach the age of eighteen (18) or are emancipated by the Court. [Res. 09-R-062 Title 1 §§ (20)(C) & (20)(I), 4/30/2009.]

10.10.300 Duration of Guardianship.

Unless the court specifies that a guardianship is temporary, the guardian appointed by the court shall have custody and care of the child and/or management of the child's property, depending on the type of guardianship, until the child reaches the age of eighteen (18), marries, is emancipated by the court, or until the guardianship is modified or terminated by the court. The Court may appoint a guardian for the child under such terms and conditions as the court sets forth in the written order. There shall be a presumption of continued guardianship in order to provide stability for the child. [Res. 09-R-062 Title 1 § (20)(E), 4/30/2009.]

10.10.310 Temporary Guardianship.

The Court may appoint a temporary guardian under such terms and conditions as the Court sets forth in the written order. A temporary guardianship order must state the expiration date of the guardianship. A temporary guardianship may be ordered before the guardianship report is completed if it is in the child's best interests to do so, however, a guardianship report must be completed within a reasonable amount of time for the guardianship to remain in place. [Res. 09-R-062 Title 1 § (20)(D), 4/30/2009.]

10.10.320 Who May File Guardianship Petition.

Any person may file a petition for guardianship. The petition shall be filed by the proposed guardian, KCWS on behalf of the child, or by the child if at least fourteen (14) years of age. If the guardian nominated by the child is not approved by the Court, the Court may appoint the guardian in the same manner as if the child were under the age of fourteen (14) years. [Res. 09-R-062 Title 1 § (20)(F), 4/30/2009.]

10.10.330 Notice of Guardianship Request.

The court must cause such notice, as the court deems reasonable to be given on any person having the care of the child, and to such other relatives of the child, as the Court may deem proper. [Res. 09-R-062 Title 1 § (20)(A)(1), 4/30/2009.]

10.10.350 Contents of Guardianship Petition.

The petition for guardianship shall include the following, to the best information and belief of the petitioner:

- (A) The full name, address and Tribal affiliation of the petitioner;
- (B) The full name, gender, date and place of birth, residence and tribal affiliation of the proposed child;
- (C) The basis for the Court's jurisdiction;
- (D) The relationship of the proposed guardian to the proposed child;

(E) The name and address of the person or agency having legal or temporary custody of the proposed child;

(F) The type of guardianship requested; and the basis or facts supporting the guardianship request;

(G) A full description and statement of value of all property owned, possessed, or in which the proposed child has an interest (if guardianship of property is requested).

All petitions must be signed and dated by the petitioners. [Res. 09-R-062 Title 1 § (20)(G), 4/30/2009.]

10.10.360 Background Checks

Upon the filing of a guardianship petition, the court shall request that KCWS complete a fingerprint FBI criminal background check and child abuse central registry check on all adults in the proposed guardian's home. The results of the background checks must be provided to the court prior to the initial hearing whenever possible, and no later than 2 weeks from the Court's request unless good exists for the court to extend that timeframe.

10.10.340 Guardianship Report.

Upon the filing of a guardianship petition, the Court shall request that KCWS or other qualified agency conduct a guardianship report on the proposed guardian and the child. The guardianship report shall contain all pertinent information necessary to assist the Court in determining the best interests of the child including factors that weigh for or against the proposed guardian's home being the best option of all currently available living situations for the child. The report must include an assessment of whether and how the proposed guardianship supports the child's emotional growth, family, tribal and cultural ties, health and stability, education, and physical care. The court may waive the guardianship report in uncontested guardianship cases.

No determination of guardianship, other than temporary guardianship, can be made until a guardianship report has been completed and considered by the Court. The guardianship report shall be submitted to the Court no later than ten (10) days before the hearing. The Court may order additional reports, as it deems necessary. [Res. 09-R-062 Title 1 § (20)(H), 4/30/2009.]

10.10.370 Best Interests of the Child Standard.

The Court must determine that a proposed guardianship is in the best interests of the child prior to granting a guardianship. The best interests of the child are served by a living situation that best maintains a child's emotional growth, family, tribal and cultural ties, health and stability, education, and physical care.

10.10.380 Funding to Cover Expenses of Caring for Child.

The Court may order regular payments to the person or agency to which custody is granted under this code, provided that sufficient funds are available. The person must use these disbursements for the sole purpose of covering expenses incurred in the care and custody of the child. The disbursements shall not be used for any other purpose. The use of these court ordered funds for any purpose other than that described in this section shall subject the person or agency with custody of the child to contempt of Court and to any criminal and civil penalties or remedies provided by the tribal code. [Res. 09-R-062 Title 1 § (20)(A)(4) 4/30/2009.]

10.10.390 Annual Review.

The Court shall review all guardianships at least once a year. This review may be accomplished through the guardian submitting written reports. The Court must set a review hearing if no written report is submitted or if the Court has questions based on the contents of the written report. The Court may in its discretion set a review hearing in any case.

10.10.400 Modification of Guardianship.

Any party or interested person may petition the Court to terminate or otherwise modify the terms of a guardianship upon a showing of good cause or a material change in circumstances. The court shall only modify the guardianship if the modification is in the child's best interests based on the good cause shown or the proven material change in circumstances. [Res. 09-R-062 Title 1 § (20)(E), 4/30/2009.]

XIII. Notice and Service of Notice of Removal of a Child

10.10.410 Removal – Notice to the parent, guardian, or custodian.

KCWS and/or law enforcement shall make all reasonable efforts to notify, through the most efficient means available, the parents, foster parents, guardian, or custodian of the Tribal Court, that the child was removed from the home or otherwise detained. KCWS will exercise due diligence to identify and notify all adult relatives within thirty (30) days of the child's removal, of the relatives' options to become a placement resource for the child. [Res. 09-R-062 Title 1 § (12)(A), 4/30/2009.]

Article XIV. Investigation, Removal, and Notice

10.10.420 Investigation.

All reports of alleged child abuse or neglect shall be responded to by KCWS staff, and investigated in coordination with other appropriate investigatory agencies including law enforcement in a manner that proves to be timely and diligent unless the Tribal Court directs otherwise. If necessary, the KCWS staff may immediately remove a child if there exists risk of physical harm to a child. An emergency removal order must be first obtained by the Court unless the emergency circumstances are such that the delay in obtaining such an order would likely result in serious harm to the child. For such orders, the Court must make a determination that remaining in the home is contrary to the child's welfare. [Res. 09-R-062 Title 1 § (13)(A), 4/30/2009.]

10.10.430 Authority to remove and place in temporary custody.

If the person responding to and investigating a report of child abuse or neglect finds that any of the following grounds for removal have been met, such persons shall arrange for removal of the child from the home in which the child is residing and place the child in a temporary receiving home or other appropriate placement, with an emergency removal order from the Tribal Court:

(A) When there is reasonable cause to believe the child is, has been or is in immediate risk of being subjected to abuse or neglect;

(B) When the child is abandoned, lost, or seriously endangered in his or her surroundings and immediate removal appears to be necessary for the child's protection or the protection of others;

(C) When there are reasonable grounds to believe that the child has run away or escaped from his parents, guardian, or legal custodian due to abuse or neglect; or

(D) When there are reasonable grounds to believe that the child is in imminent danger of serious physical or psychological harm. [Res. 09-R-062 Title 1 § (13)(B), 4/30/2009.]

10.10.440 Efforts to prevent removal.

Before taking a child into custody, a social worker shall consider whether the child can remain safely in his or her residence. The consideration of whether the child can remain safely at home shall include, but shall not be limited to, the following factors:

(A) Whether there are any reasonable services available to the worker which, if provided to the child's parent, guardian, caretaker, or to the minor, would eliminate the need to remove the child from the custody of his or her parent, guardian, or caretaker.

(B) Whether a referral to public assistance would eliminate the need to take custody of the child. If those services are available, they shall be utilized.

(C) Whether a nonoffending caretaker can provide for and protect the child from abuse and neglect and whether the alleged perpetrator voluntarily agrees to withdraw from the residence, withdraws from the residence, and is likely to remain withdrawn from the residence. [Res. 09-R-062 Title 1 § (13)(C), 4/30/2009.]

Article XV. Filing a Youth in Need of Care Petition

10.10.450 Grounds and content of the petition.

A Youth in Need of Care Petition (the "petition"), may be filed by any interested party when there is reasonable cause to believe that a child is, has been or is in immediate risk of harm to himself, herself or others, or at immediate risk of abuse or neglect. The petition shall state the specific facts concerning:

- (A) The name, address, gender and age of the child;
- (B) The names and address of the child's parents and any custodians of the child; unless it is known that one (1) of the parents is a victim of domestic violence and there exists good cause that the address shall be kept confidential;
- (C) A concise statement of facts that support the conclusion that the child is, has been or is in immediate risk of being subjected to abuse or neglect or other serious risk of harm;
- (D) The names and addresses of any other person or Tribe with an interest in the child;
- (E) The nature and extent of the child's alleged injury, abuse or neglect or other serious risk of harm;
- (F) Any evidence of injuries, abuse or neglect (including reports from doctors, public health nurses, health assistance, teachers, and witnesses to injury, abuse or neglect, etc., and the date, time and location supporting allegations of abuse and neglect);
- (G) Any information that may be helpful in identifying the cause of the child's alleged injuries or neglect;
- (H) A statement identifying of what tribe(s), if any, the child is a member or eligible for membership; and
- (I) The factual basis for the Court's jurisdiction.

If the child is placed or detained outside of the home, the petition shall state where the child is placed, the facts necessitating removal, and the date and time of the removal. If the child has been removed from the home, he or she must be returned home if a petition has not been filed within two (2) court days of the date of removal. [Res. 09-R-062 Title 1 § (14)(A), 4/30/2009.]

10.10.460 Notice upon filing of a petition.

Upon the filing of a petition, the judge or Clerk of the Tribal Court shall issue a written notice, which may be in the form of a summons directing the parents, guardians of the child and all other necessary parties to the proceedings, to be present in Court for hearing at the time and place fixed in the notice.

Notice of the hearing and the parties' rights may also be issued to foster parents if any, pre-adoptive parents or relative providing care for the child except that this paragraph shall not be construed to

require any foster parent or relative providing care to be made a party to the action solely on the basis of such notice.

The summons shall contain a statement, when appropriate, that the modification of the parent/child legal relationship is a possible remedy under the proceedings as well as any other legal rights of the child, the parents, or guardian, or any other respondent, including the right to be represented by an advocate or attorney at their own expense.

If the whereabouts of the parents or guardians are unknown, the Tribal Court may proceed to take any action to protect the child. Any person served with notice who fails to appear without reasonable cause may be subject to contempt of Court and a bench warrant may be issued. The returns or proofs of service shall be filed in the record of the case. [Res. 09-R-062 Title 1 § (14)(B), 4/30/2009.]

10.10.470 Service of summons.

(A) Summons shall be served personally, at least two (2) days before the time fixed in the summons for the appearance of the person served.

(B) If the parents, guardian, or other legal custodian of the child required to be summoned cannot be found within the Tribe's jurisdiction, the fact of the child's presence within the Tribe's jurisdiction shall confer jurisdiction on the Tribal Court as to any absent parent, guardian, or legal custodian, if notice has been given in the following manner:

(1) When the residence of the person to be served is outside Tribal lands, a copy of the summons shall be sent certified mail with postage prepaid to such person at his or her place of residence with a return receipt requested. Service of summons shall be deemed complete upon return of the requested receipt.

(2) When the person to be served has no residence within Tribal lands and his or her place of residence cannot be determined after due diligence, service may be made by publication in a newspaper of general distribution for three (3) consecutive weeks. [Res. 09-R-062 Title 1 § (14)(C), 4/30/2009.]

10.10.480 Required notice and rights for all judicial proceedings.

(A) The judge or Clerk of the Tribal Court shall issue a written notice, which may be in the form of a summons directing the parties named in the action, the parents, and the guardians of the child, to be present in Court for hearing or proceeding at the time and place fixed in the notice. Notice of the proceeding and the right to be heard, shall also be issued to foster parents, pre-adoptive parents, or relatives providing care for the child in all permanency hearings and six (6) month reviews, at a minimum. Notice of and a right to be heard does not require the Court to make the caregiver a party to the proceeding.

(B) All parties have a right to be represented by an advocate or attorney at their own expense in all proceedings under this Code, to introduce evidence, to be heard on his or her own behalf, to examine witnesses, and to be informed of possible consequences if the allegations of the petition are found to be true. All parties shall be entitled to copies of court documents, including petitions and reports, no less than forty-eight (48) hours before the hearing whenever possible, unless deemed inappropriate by the Court. Missing parties and relatives shall be noted and notice to the parties shall be reviewed. [Res. 09-R-062 Title 1 § (14)(D), 4/30/2009.]

Article XVI. Initial Hearing

10.10.490 Initial hearing.

(A) The initial hearing regarding the removal or detention of a child shall be held before the end of the third working day (seventy-two (72) hours) following the filing of the petition.

(B) In the event a child is not removed or detained, the initial hearing shall be held before the end of the fifteenth court day following the filing of the petition.

(C) The purpose of the initial hearing is to determine whether probable cause establishes that the allegations in the Youth in Need of Care Petition are true. During the hearing, the Court shall advise the parties of the reason for the hearing and of their rights to be heard on all issues.

(D) Any agency reports shall be received as evidence.

(E) The allegations of abuse or neglect shall be admitted or denied by the parent(s), guardian, or any other persons exercising legal custody and care of the child.

(F) Missing parties and relatives shall be noted and notice to the parties shall be reviewed.

(G) The Court shall make the following findings:

(1) Whether continuation of the child in the home would be contrary to the child's welfare.

(2) The factual basis for the Court's decision.

(3) Award the care, custody and placement of the child with KCWS upon a finding that removal is necessary.

(4) Whether reasonable efforts have been made to prevent removal.

(H) Reasonable efforts to prevent removal or reunification are not required if the parent has committed murder or voluntary manslaughter, of another child of the parent; parental rights of the parent with respect to a sibling have been terminated involuntarily; the parent has abandoned an infant; a parent or guardian has aided or abetted, attempted to conspire, solicit commission of a murder or voluntary manslaughter of a child of the parent; the parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent; or finds that the parent has subjected the child to other aggravated circumstances pursuant to relevant law.

(I) If the Court makes a determination that reasonable efforts to prevent removal or reunification are not required, the Court shall then make a judicial finding that reasonable efforts are being made to finalize the permanency plan for the child. The Court shall hold a permanency hearing within thirty (30) days of the determination that reasonable efforts to prevent removal or to reunify are not required, and then hold a permanency hearing no less frequently than every six (6) months thereafter. In such cases, KCWS will file a petition to terminate parental rights within sixty (60) days of a judicial determination that reasonable efforts are not required to prevent removal or reunify because of one (1) of the reasons set forth in subsection [\(H\)](#) of this section.

(J) The Court shall specify the terms of any visitation.

(K) *Possible Outcomes of the Initial Hearing.*

(1) The Youth in Need of Care Petition may be dismissed and the child remains or is returned to home with direction to the parties concerning future parental conduct and the provision of services to the child and parents;

(2) The child may remain or be returned to the home of the parents, guardian or custodian under the supervision of the Court, pending the determination hearing;

- (3) The child may be continued in the child's out-of-home placement pending the determination hearing; or
- (4) The child may be continued in the child's out-of-home placement pending a mediation or family unity conference.
- (5) If the proceeding necessitates the removal of a child, the Court shall find that continuation of the child in the home would be contrary to the child's welfare. The Court shall award the care, custody and placement of the child with KCWS and appoint a Court Advocate to advocate for the child.

The Court shall state for the record and in its Findings and Orders the factual basis for this conclusion. The grounds for removal or continued removal are:

- a. The child has no parent, guardian or custodian available, willing and capable to safely care for the child;
 - b. The child is likely to suffer serious emotional or physical injury inflicted upon them by other than accidental means;
 - c. The child has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his/her parent, guardian or custodian, which is necessary for the child's health and well-being;
 - d. The child has been sexually abused or sexually exploited; or
 - e. The child has suffered, or is likely to suffer, emotional damage, as a result of severe emotional abuse or neglect, which causes or creates a substantial risk of impaired development.
- (6) If the child was removed and placed in a Short-Term Residential Treatment Program the Court shall make the findings outlined in section 10.10.1000(B) and state in writing the factual basis.
 - (7) If the child is removed, the Court may order visitation with the parent(s), guardian(s), siblings, or other relatives or persons important to the child.
 - (8) The Court may issue any other orders it deems necessary.

Article XVII. Determination Hearing

10.10.500 Timing.

The determination hearing shall be held no later than twenty-one (21) days following conclusion of the initial hearing or family unity conference, whichever occurs later. [Res. 09-R-062 Title 1 § (16)(A), 4/30/2009.]

10.10.510 Purpose.

The purpose of the determination 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 reasonable efforts have been made to prevent the child's removal from home and to safely reunify the family. [Res. 09-R-062 Title 1 § (16)(B), 4/30/2009.]

10.10.520 Findings.

- (A) 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.
- (B) Jurisdictional matters of the age and residence of the child shall be deemed admitted by or on behalf of the child, unless specifically denied prior to the determination hearing.
- (C) 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.
- (D) 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.

(E) 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.

(F) Determine whether and why continuation of the child in the home would be contrary to the child's welfare.

(G) If the petitioner is KCWS, KCWS shall be ordered to be responsible for the care and placement of the child upon a finding that the child will be removed.

(H) Determine whether reasonable efforts have been made to reunify. Reasonable efforts to prevent removal or reunification are not required if the parent has committed murder or voluntary manslaughter, of another child of the parent; parental rights of the parent with respect to a sibling have been terminated involuntarily; the parent has abandoned an infant; a parent or guardian has aided or abetted, attempted to conspire, solicit commission of a murder or voluntary manslaughter of a child of the parent; the parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent; or finds that the parent has subjected the child to other aggravated circumstances pursuant to relevant law.

(I) If the Court makes a determination that reasonable efforts to prevent removal or reunification are not required, the Court shall then make a judicial finding that reasonable efforts are being made to finalize the permanency plan for the child. The Court shall hold a permanency hearing within thirty (30) days of the determination that reasonable effort to prevent removal or to reunify are not required, and then hold a permanency hearing no less frequently than every six (6) months thereafter. In such cases, KCWS will file a petition to terminate parental rights within sixty (60) days of a judicial determination that reasonable efforts are not required to prevent removal or reunify because of one (1) of the reasons set forth in subsection [\(H\)](#) of this section.

(J) If the child was removed and placed in a Short-Term Residential Treatment Program the Court shall make the findings outlined in section 10.10.1000(B) and state in writing the factual basis.

(K) 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 KCWS as the Tribal Court may order, if:

- (1) 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
- (2) 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. [Res. 09-R-062 Title 1 § (16)(C), 4/30/2009.]

Article XVIII. Placement and Services Hearing

10.10.530 Timing.

The placement and services hearing shall be held no later than sixty (60) days after issuance of a determination order, and in no event more than six (6) months after the child has entered foster care. The Tribal Court shall hear evidence regarding the proper disposition of the case and long-term plan best serving the interests of the child and his or her tribe. [Res. 09-R-062 Title 1 § (17)(A), 4/30/2009.]

10.10.540 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. [Res. 09-R-062 Title 1 § (17)(B), 4/30/2009.]

10.10.550 Findings/Orders.

(A) If the Court determines that it is in the best interests of the child and does not violate the rights of a party, the Court may allow the child to testify by means of a videotape deposition, closed circuit television or other appropriate method. If the Court does allow these methods to be utilized, the Court shall specifically set out the reasons for this determination on the record.

(B) The Tribal Court shall determine:

- (1) The appropriate disposition of the case and long-term plan for the child;
- (2) Where the child should be placed;
- (3) Whether the proposed case plan reasonably addresses the problems and needs of the child and parent;
- (4) Whether reasonable efforts were made to reunify.

(C) 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.

(D) The Court may find that the child shall remain out of the home. The grounds for continued removal are:

- (1) The child has no parent, guardian or custodian available, willing and capable to safely care for the child;
- (2) The child is likely to suffer serious emotional or physical injury inflicted upon them by other than accidental means;
- (3) The child has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his/her parent, guardian or custodian, which is necessary for the child's health and well-being;
- (4) The child has been sexually abused or sexually exploited; or
- (5) The child has suffered, or is likely to suffer, emotional damage, as a result of severe emotional abuse or neglect, which causes or creates a substantial risk of impaired development.

(E) 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.

(F) The Tribal Court may order a trial home visit, for no more than six (6) months, unless the Court authorizes them for a longer period. The Court order must explicitly extend the trial home visit. During such trial home visits, KCWS retains the responsibility for the placement and care of the child

and may remove the child from the home for any of the reasons set forth in Article [XIII](#) of this chapter, without having to file a new Youth in Need of Care Petition.

(1) While the child is on a trial home visit, the months during which a child is on a trial home visit do not count towards the child being in foster care when counting whether the child has been out of the home for fifteen (15) of the last twenty-two (22) months. Of the most recent twenty-two (22) months (all months are counted, whether the child is in foster care or at home), if the child has been in foster care for fifteen (15) or more of those months, KCWS shall file a petition to terminate parental rights as set forth in Article XXI of this chapter.

(G) 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 the child should be returned home.

(H) 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 caused 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:

- (1) Parenting education classes;
- (2) Alcohol or substance abuse treatment;
- (3) Counseling for victims or perpetrators of domestic violence; or
- (4) Any other services that the Court determines may be useful in aiding family reunification.

(I) The Court may continue the placement and services 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.

(j) For a child fourteen (14) years or older, the Court shall find whether the services set forth in the Independent Living Plan include those needed to assist the child to make the transition from foster care to independent living.

(K) For a child who will turn eighteen (18) years old in the next ninety (90) days and intends to enter extended foster care, the Court shall find whether the child's Transitional Independent Living Plan

includes a plan for the child to satisfy one of the requirements specified in section 10.10.980 to remain under Tribal Court jurisdiction as a youth in need of care.

(L) For a child who will turn eighteen (18) within the next ninety (90) days, the Court shall find whether the child's Transitional Independent Living Plan includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services.

(L) If the child was removed and placed in a Short-Term Residential Treatment Program the Court shall make the findings outlined in section 10.10.1000(B) and state in writing the factual basis.

(M) The Court may issue any other orders it deems necessary.

(N) 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.

(O) If a parent, guardian, or custodian fails to appear for the hearing, the Court may find such parent, guardian, or custodian in default, and enter any orders it could otherwise enter.

(P) Before finding a parent, guardian, or custodian in default, the Court must be satisfied that actual notice has been given or that all reasonable possible steps have been taken to provide such notice.

(Q) If the parent, guardian, or custodian is found in default, the Court shall specify the facts, grounds, and Children and Family Code sections upon which it relied to make such finding. [Res. 09-R-062 Title 1 § (17)(C), 4/30/2009.]

Article XIX. Status Review Hearings

10.10.560 Timing.

The Tribal Court shall review the status of all children at least every ninety (90) days at a hearing to determine whether Court supervision shall continue. In no event shall a status review hearing for children placed in foster care, another out-of-home arrangement, or where a child has been returned to the home of the parent as a family maintenance case, be made less frequently than once every six (6) months beginning with the date the child is considered to have entered foster care. [Res. 09-R-062 Title 1 § (18)(A), 4/30/2009.]

10.10.570 Purpose and findings.

(A) 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 and Family Code still exists. The Court may, however, due to unresolved problems in the home, continue court intervention, services, and supervision as may be deemed appropriate.

(B) If appropriate, the Court may refer the matter to the Tribe's Peacemaker Mediation Forum or for family unity.

(C) The general purpose of status review hearings is for the Court to determine the safety and continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care, and will project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship.

(D) Status review hearings are not required for children for whom a legal guardian has been appointed by the Karuk Tribal Court as a permanent plan and the KCWS is no longer vested by the Court with responsibility for the child's placement and care (i.e., the child has exited foster care) unless the child has been removed from the guardian.

(E) The specific purpose of the status review hearing is for the Tribal Court to:

(1) Review the placement and plan for assuring that the child receives safe and proper care;

(2) Determine the continuing need for and appropriateness of the placement;

(3) Determine the extent of compliance with the case plan;

(4) Determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement;

(5) Project a likely date by when the child may be (a) returned and safely maintained at home, (b) placed with a legal guardian, (c) placed with a fit and willing relative, (d) placed for adoption and the KCWS will file a petition to terminate parental rights, or (e) placed in another planned permanent living arrangement; provided, that the KCWS has documented to the Court a compelling reason that it is not in the child's best interest to be reunified, placed with a legal guardian or fit and willing relative, have parental rights be terminated, or be adopted;

- (6) In the case of a child who will not be returned to the parent, the hearing shall consider in-state and out-of-state placement options;
- (7) If the child is placed out of state, determine whether the out-of-state placement continues to be appropriate and in the best interest of the child;
- (8) If the child is in the custody of the parent, as a family maintenance case, determine whether there continues to be a need for continuing court supervision or terminate jurisdiction over the case; and
- (9) For a child fourteen (14) years or older, the Court shall find whether the services set forth in the Independent Living Plan include those needed to assist the child to make the transition from foster care to independent living.
- (10) For a child who will turn eighteen (18) years old in the next ninety (90) days and intends to enter extended foster care, the Court shall find whether the child's Transitional Independent Living Plan includes a plan for the child to satisfy one of the requirements specified in 10.10.980 to remain under Tribal Court jurisdiction as a youth in need of care.
- (11) For a child who will turn eighteen (18) within the next ninety (90) days, the Court shall find whether the child's Transitional Independent Living Plan includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services.
- (12) If the child was removed and placed in a Short-Term Residential Treatment Program the Court shall make the findings outlined in section 10.10.1000(B) and state in writing the factual basis.
- (13) The Court consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child. [Res. 09-R-062 Title 1 § (18)(B), 4/30/2009.]

Article XIX. Permanency Hearings

10.10.580 Timing.

A permanency hearing to determine the permanency plan for the child, must be held no later than twelve (12) months from the date the child enters foster care and not less frequently than every six (6) months thereafter during the continuance of foster care, including voluntary foster care placements. However, if there has been a judicial finding that reasonable efforts to prevent removal or reunification are not required as set forth in section [10.10.490](#), the first permanency hearing must be held within thirty (30) days of such finding. [Res. 09-R-062 Title 1 § (19)(A), 4/30/2009.]

10.10.590 Purpose.

The purpose of permanency hearings is to determine:

- (A) The permanency plan for the child that includes whether, and if applicable when, the child will be (1) returned to the parent, (2) placed with a legal guardian, (3) placed with a fit and willing relative, (4) placed for adoption and the KCWS will file a petition to terminate parental rights, or (5) placed in another planned permanent living arrangement; provided, that KCWS has documented to the Court a compelling reason that it is not in the child's best interest to be reunified, placed with a legal guardian or fit and willing relative, have parental rights be terminated, or be adopted;
- (B) In the case of a child who will not be returned to the parent, the hearing shall consider in-state and out-of-state placement options;
- (C) In the case of a child placed out of the state in which the home of the parent(s) of the child is located, the hearing shall determine whether the out-of-state placement continues to be appropriate and in the best interests of the child;
- (D) In the case of a child who has attained age fourteen (14), the services needed to assist the child to make the transition from foster care to independent living;
- (E) 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;

(F) Determine the safety of the child, the continuing need for and appropriateness of the placement;

(G) Determine the extent of compliance with the case plan;

(H) Determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement; and

(I) Project a likely date by which the child may be returned and safely maintained at home or placed for adoption or legal guardianship. [Res. 09-R-062 Title 1 § (19)(B), 4/30/2009.]

10.10.600 Findings.

(A) The Tribal Court must make a finding whether the Tribe's Child Welfare Services have made reasonable efforts to finalize a permanency plan for the child. The permanency plan may be to reunify the family or to secure the child a new permanent home. This finding must be made within twelve (12) months from the date the child enters foster care, and it must then be made every six (6) months thereafter.

(B) The Court must also make a finding whether reasonable efforts have been made to reunify. The Court may find that a lack of efforts is reasonable, such as when there is no safe way to make efforts to reunify.

(C) The Court's reasonable efforts findings must be detailed. They must include relevant case facts.

(D) The Court may waive reasonable efforts to reunify if it finds the parent has committed murder or voluntary manslaughter, of another child of the parent; a parent or guardian has aided or abetted, attempted to conspire, solicit, commission of a murder or voluntary manslaughter of a child of the parent; the parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent; or the parental rights of the parent with respect to a sibling have been terminated involuntarily; the parent has abandoned an infant; or finds that the parent has subjected the child to other aggravated circumstances. If the reasonable efforts requirements are waived under the above circumstances, a separate reasonable efforts finding is not required.

(E) The Court may determine at a permanency hearing that there is a compelling reason that reunification, adoption, guardianship, and relative placement are not in the child's best interests. If it

makes such a finding, the Court may order another planned permanent living arrangement; provided, that KCWS has documented to the Court why KCWS has ruled out other permanency goals before recommending another planned alternate living arrangement and a compelling reason, on a case-by-case determination, for such alternative plan.

(F) The Court may order reunification as the permanent plan if the parents have been diligently working toward reunification, and reunification is expected in a period consistent with the child's developmental needs.

(G) 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 fifteen (15) of the most recent twenty-two (22) months, the Court will order a hearing under Article [XXI](#) of this chapter, unless the child is being cared for by a relative, the KCWS has documented in the case plan a compelling reason for not filing to terminate parental rights, or the KCWS has not provided to the family services that the KCWS deemed necessary for the safe return of the child when reasonable efforts to reunify are required.

(H) The Court shall make a finding whether KCWS shall retain continued responsibility for the placement and care of the child. [Res. 09-R-062 Title 1 § (19)(C), 4/30/2009.]

(I) For a child fourteen (14) years or older, the Court shall find whether the services set forth in the Independent Living Plan include those needed to assist the child to make the transition from foster care to independent living.

(J) For a child who will turn eighteen (18) years old in the next ninety (90) days and intends to enter extended foster care, the Court shall find whether the child's Transitional Independent Living Plan includes a plan for the child to satisfy one of the requirements specified in 10.10.980 to remain under Tribal Court jurisdiction as a youth in need of care.

(K) For a child who will turn eighteen (18) within the next ninety (90) days, the Court shall find whether the child's Transitional Independent Living Plan includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services.

(L) If the child was removed and placed in a Short-Term Residential Treatment Program the Court shall make the findings outlined in section 10.10.1000(B) and state in writing the factual basis.

Article XXI. Termination and Modification of Parental Rights

10.10.610 Purpose.

In accordance with custom and practice, absent extreme circumstances, it is against the Karuk Tribe's policy and philosophy to terminate parental rights for the children subject to the Tribal Court's jurisdiction but rather to modify parental rights and allow another permanent plan for the child including where appropriate, an adoption as provided for in Article [XXII](#) of this chapter.

This article shall be construed in a manner consistent with the premise that all parties shall be secured their rights as set forth in the Karuk Tribe's Constitution, that the family unit is of utmost value to the Tribal community and individual family, and that all efforts shall be made to keep the family intact. The parent-child relationship is of such vital importance that termination or modification of parental rights may be used only as a last resort when all efforts have failed to avoid separation and that it is found to be in the best interests of the child and Tribe to proceed under this article. When moving to terminate parental rights, KCWS shall document in the child's case plan whether the preservation and continuation of Tribal customs and practice of Tribal families constitutes a compelling reason to not terminate a parent's rights and whether termination of parental rights is in the best interests of the child and the Tribe. In such cases where a compelling reason exists to not terminate parental rights, KCWS may recommend, and the Court may order, modification of parental rights (as set forth in section [10.10.630](#)) or another permanent plan.

A Petition for Termination of Parental Rights shall be filed with the Tribal Court as set forth in the below sections.

The purpose of this article is to provide for the voluntary and involuntary modification of the parent-child relationship to achieve family permanency including allowing for permanency of the child through the adoption process as set forth in Article [XXII](#) of this chapter. [Res. 09-R-062 Title 1 § (21)(A), 4/30/2009.]

10.10.620 Grounds for involuntary termination of parental rights.

The Tribal Court may terminate parental rights to a child without the parent's consent only if, by proof beyond a reasonable doubt, it finds that terminating parental rights is in the best interest of the child and the Tribe based on one (1) or more of the following grounds:

- (A) *Abandonment*. The child has been abandoned as defined herein.
- (B) *Physical or Severe Emotional Injuries*. Willful and repeated physical and/or severe emotional injuries of the child by the parent(s); or that the parent(s) knew that another individual willfully caused physical or severe emotional injuries and failed to remove the child from the abusive situation, to ask law enforcement to remove the individual, or to take other steps to protect the child.
- (C) *Sexual Abuse*. Willful and severe or repeated acts of sexual abuse or sexual exploitation by the parent or parents or that the parents knew that another individual willfully and severely or repeatedly caused acts of sexual abuse or sexual exploitation and failed to remove the child from the deprived situation and/or to ask law enforcement to remove the individual.
- (D) *Emotional Harm*. The return of the child may result in serious permanent emotional damage as supported by the best evidence available.
- (E) *Severe Neglect*. Pervasive and uncorrectable failure or refusal to provide proper or necessary subsistence, education, medical care, shelter, a safe environment or any other necessary care for the child's health, guidance, or well-being.
- (F) *Domestic or Family Violence*. There is a severe continuing pattern of domestic or family violence taking place in the presence of the child.
- (G) Other aggravated circumstances, such as where the parent has committed murder or voluntary manslaughter of another child of the parent; a parent or guardian has aided or abetted, attempted to conspire, solicit commission of a murder or voluntary manslaughter of a child of the parent; the parental rights of the parent with respect to a sibling have been terminated involuntarily; the parent has abandoned an infant; the parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent; or finds that the parent has subjected the child to other aggravated circumstances as defined by relevant law.
- (H) *Decisions to Terminate Parental Rights*. Decisions to terminate a parent's legal and custodial right to his or her child shall be made on a case-by-case basis. [Res. 09-R-062 Title 1 § (21)(B), 4/30/2009.]

10.10.630 Modification of parental rights.

A party may file a Petition for Modification of Parental Rights, instead of a Petition for Termination of Parental Rights, provided all of the requirements for filing a Petition for Termination of Parental Rights have been followed. The Court has the discretion, if compelling reasons exist on a case-by-

case basis, to order modification of parental rights, instead of full termination of parental rights, upon hearing either a Petition for Termination of Parental Rights or a Petition for Modification of Parental Rights. [Res. 09-R-062 Title 1 § (21)(C), 4/30/2009.]

10.10.640 Pre-filing requirements.

A petitioner seeking involuntary termination of the parent-child relationship must establish the following:

(A) The child has been declared to be under the jurisdiction of the Tribal Court under this Children and Family Code or a dependent of a state juvenile court for at least a consecutive one (1) year period of time, and has been removed from his or her parent at the time of this modification hearing for a cumulative period of fifteen (15) of the previous twenty-two (22) months, unless a compelling reason not to file a termination petition exists; (1) a cumulative method of calculation will be used when a child experiences multiple exits from and entrances into foster care during the twenty-two (22) month period; and (2) the calculation of the fifteen (15) month period in foster care will not include trial home visits or runaway episodes.

(B) The Court has entered an order which states what the parent was required to accomplish to correct his or her underlying problem(s) to regain custody;

(C) The social service agency involved has engaged in active efforts to offer or provide all court-ordered services that are reasonably available in the community and which are capable of helping the parent resolve his or her underlying problem(s);

(D) There is little likelihood the conditions will be remedied so that the child can be returned to the parent(s) in the near future;

(E) Continuation of the current parent-child relationship clearly diminishes the child's prospects for successful placement into a permanent and stable home; and

(F) Not returning the child to his or her parent is the least detrimental alternative that can be taken. [Res. 09-R-062 Title 1 § (21)(D), 4/30/2009.]

(G) KCWS may elect not to file a Petition for Termination of Parental rights although grounds to file exist if:

(1) At the option of KCWS, the child is being cared for by a relative; or (2) KCWS has documented in the case plan, which has been reviewed by the Court, a compelling reason for determining that filing a Petition to Terminate Parental Rights would not be in the best interests of the child. (3) KCWS has not provided to the family, consistent with the time period in the case plan, services that KCWS deems necessary for the safe return of the child to the home, when reasonable efforts to reunify the family are required.

10.10.650 Who may file a petition for termination of parental rights.

A petition may be filed by:

- (A) Either parent when termination is sought with respect to the other parent;
- (B) An authorized Tribal representative or KCWS;
- (C) Any other person possessing a legitimate interest in the matter; or
- (D) A parent seeking voluntary termination of his or her parental rights.

No parental rights may be terminated or modified unless a petition has first been filed, written notice has been given, and a hearing held in accordance with the provisions of this article. [Res. 09-R-062 Title 1 § (21)(E), 4/30/2009.]

10.10.660 Contents of the termination of parental rights petition.

The Petition for Termination or Modification of Parental Rights shall include the following to the best information and belief of the petitioner:

- (A) The name, place of residence and Tribal affiliation of the petitioner (if other than an authorized Tribal representative);
- (B) The full name, gender, date and place of birth, residence and Tribal affiliation of the child;
- (C) The basis for the Court's jurisdiction;
- (D) State the relationship of the petitioner to the child, or the fact that no relationship exists;
- (E) The names, addresses, Tribal affiliation, and dates of birth of the child's parents;

- (F) If the child's parent(s) is a minor, the names and addresses of the parents' parents or guardian; and if such parent has no parent or guardian, the members of such parent's extended family;
- (G) The name and address of the person or agency having legal or temporary custody of the child;
- (H) The grounds on which the modification is sought under this Children and Family Code;
- (I) A statement that the pre-filing requirements set forth in this Children and Family Code have been met; and
- (J) A list of the assets of the child together with a statement of the value thereof.

When any of the facts required by this article are unknown, the petition shall so state. The petitioner shall sign and date the petition. [Res. 09-R-062 Title 1 § (21)(F), 4/30/2009.]

10.10.670 Notice.

After a petition for the involuntary termination or modification of parental rights has been filed, the Tribal Court shall set the time and place for hearing and shall cause written notice of the date, time and place of the hearing, and consequences of a modification. Notice shall be given to the child if ten (10) years of age or older, the child's representative, petitioner, the parents of the child, any guardian of the person of the child, the person having legal or temporary custody of the child, and the child's extended family, and any representative of record in the action as determined by the Court. If the child's parent is a minor, notice shall also be given to that parent's parents or guardian of the person unless the Tribal Court is satisfied, in exercise of its discretion, that such notice is not in the best interest of the parent and that it would serve no useful purpose.

Notice of the hearing and the right to be heard shall also be issued to foster parents if any, pre-adoptive parents or relatives providing care for the child except that this paragraph shall not be construed to require any foster parent or relative providing care to be made a party to the action solely on the basis of such notice. [Res. 09-R-062 Title 1 § (21)(G), 4/30/2009.]

10.10.680 Service.

Notice shall be given by personal service. If service cannot be made personally, the Tribal Court may authorize service by registered mail at the last known address of the person to be served. If notice cannot be served by registered mail, the Tribal Court may authorize service by publication in either

the Tribal newspaper or a newspaper of general circulation in the county where the Court is located, once a week for three (3) consecutive weeks. All notices served whether personally or by registered mail shall be received by the person named therein no less than ten (10) days prior to the date set for the hearing. No hearing can be held sooner than ten (10) days after the last publication where service is made by publication. Except where service is by publication, notice shall include a copy of the petition. [Res. 09-R-062 Title 1 § (21)(H), 4/30/2009.]

10.10.690 Waiver.

Notice and appearance may be waived by a parent in writing before the Tribal Court, or in the presence of and witnessed by a Clerk of the Court; provided, that such parent has been apprised of the meaning and consequences of the modification of parental rights action, including that the modification could allow an adoption to go forward. Any parent who has executed such a waiver shall not be required to appear at the hearing. Where the parent is a minor, the waiver shall be effective only upon approval by the Court. [Res. 09-R-062 Title 1 § (21)(I), 4/30/2009.]

10.10.700 Pre-termination or pre-modification of parental rights report.

(A) Upon the filing of a petition under this article for the involuntary termination or modification of parental rights, the Tribal Court shall order that KCWS or another qualified agency prepare and submit to the Court a report in writing. The report shall be submitted to the Court no later than ten (10) days before the hearing with copies given to the parents, the child's representative, and all counsel of record. The purpose of the report is to aid the Tribal Court in making a determination on the petition and shall be considered by the Tribal Court prior thereto. The Tribal Court may request additional reports where it deems necessary.

The report shall include the following information: the circumstances of the petition, the investigation, the present condition of the child and parents, documentation of the basis for the recommendation of removal or remaining in the home, the proposed plans for the child's well-being and placement, including efforts to identify, recruit, process and approve a qualified prospective adoptive parent or guardian, and other such facts as may be pertinent to the parent and child relationship.

The report shall include a recommendation and the reasons therefor, as to whether or not the parent and child relationship should be modified.

(B) The Court may also consider the report of any Court-appointed advocate for the child. [Res. 09-R-062 Title 1 § (21)(J), 4/30/2009.]

10.10.710 Relinquishment of parental rights by voluntary modification.

It is not the Tribe's policy to encourage relinquishment of parental rights, and such action is not to be taken lightly. Parental rights may be relinquished by a parent in writing, if signed by the parent in the presence and with approval of the Court. Relinquishment shall not be accepted or acknowledged by the Court prior to ten (10) days after birth of the child. The Tribal Court must find prior to approving the relinquishment that the parent understands the consequences of the relinquishment, and has made a knowing and intelligent waiver of all of his or her parental rights subject to the modification order, that his or her parental rights will be modified, and that the parent's decision may result in adoption of the child. A parent who wishes to relinquish his parental rights shall be provided an interpreter if he or she does not understand English. [Res. 09-R-062 Title 1 § (21)(K), 4/30/2009.]

10.10.720 Hearing.

The hearing procedures shall be in accordance with those set forth in this Children and Family Code and the Karuk Tribal Court Rules. [Res. 09-R-062 Title 1 § (21)(L), 4/30/2009.]

10.10.730 Burden of proof.

The burden of proof lies with the petitioner to prove the allegation(s) in the modification petition are supported by evidence beyond a reasonable doubt and that the best interests of the child will be served by modification of parental rights. Pre-modification reports shall be received in evidence so long as the preparer is available to be cross-examined. [Res. 09-R-062 Title 1 § (21)(M), 4/30/2009.]

10.10.740 Findings of facts and conclusions of law.

The Tribal Court shall make formal findings of fact and conclusions of law as a basis for the written order modifying the parent-child relationship including making findings on:

(A) Make a finding on whether there is documentation of the grounds as to why the child cannot or should not be returned to the home of his or her parents.

(B) Make findings on whether reasonable efforts were made to prevent removal of the child or whether such efforts were not required.

(C) Make findings on whether reasonable efforts were made to reunify the child or whether such efforts are not required.

(D) Make findings on whether reasonable efforts have been made to achieve a permanency plan for the child and/or finalize an alternate permanent placement for the child when the child cannot be reunified with the family.

(E) In the case of parental relinquishment, make a finding that the parent has knowingly and voluntarily relinquished the child in writing. [Res. 09-R-062 Title 1 § (21)(N), 4/30/2009.]

10.10.750 Result of termination or modification of parental rights order.

Upon the termination of parental rights, all rights, powers, privileges, immunities, duties, and obligations including any rights to custody, legal or physical control, visitation, or support existing between the child and parent shall be severed.

The Court is also empowered to modify parental rights without full legal severance of all parental rights, and the parties are encouraged to negotiate a modification agreement, subject to the Court's approval, that is tailored to meet the best interest of the child and the Tribe.

Any child support arrears shall remain in place and payable up to the date of the modification or termination order unless otherwise ordered by the Court. Modification of the rights of one (1) parent shall not affect the rights of the other parent.

A modification order shall be considered a factor in determining whether the child remains eligible to inherit property or other interest from the parent whose rights were modified. A parent whose rights were modified shall not be eligible to inherit from such child after modification unless expressed by the child after reaching the age of adulthood in a written will instruction. [Res. 09-R-062 Title 1 § (21)(O), 4/30/2009.]

10.10.760 Children's continued right to benefits.

An order modifying the parent-child relationship shall not disentitle a child to any benefit due the child from any third person, agencies, state, or the United States, nor shall any action under this Children and Family Code be deemed to affect any rights and benefits that the child derives from the child's descent from a member of a federally recognized Indian tribe. [Res. 09-R-062 Title 1 § (21)(P), 4/30/2009.]

10.10.770 Custody after modification of parental rights order.

If upon entering an order modifying the custodial and legal rights of a parent, there remains no parent having parental rights, the Tribal Court shall determine whether the child shall continue to remain under care and placement responsibility of the KCWS for the purpose of placing the child for adoption, or in the absence of an adoptive home, KCWS may place the child in a licensed foster home or with an extended family member, guardianship or take other suitable measures for the care and welfare of the child.

The order shall specify the permanency plan for the child and if the child will be placed for adoption order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed one hundred eighty (180) days.

Appoint, consistent with Tribal placement preferences, a relative or relatives, extended family member or Tribal member as legal guardian or guardians for the child, and order that letters of guardianship be issued; or order an alternative permanent placement plan for the child.

Where a child is appointed a legal guardian, as distinct from a placement into foster care, the legal guardian shall have the authority to consent to the adoption of the child, the marriage of the child, the enlistment of the child in the armed forces of the United States, necessary care including but not limited to surgical and other medical treatment for the child and consent to such matters as might normally be required of the child's parent. [Res. 09-R-062 Title 1 § (21)(Q), 4/30/2009.]

10.10.780 Future status review hearings.

If a child has not been adopted or permanently placed within six (6) months of the modification order, another six (6) month status review hearing will be held. Such six (6) month hearings and six

(6) month permanency hearings will continue until the child is adopted or permanent placement can be established. [Res. 09-R-062 Title 1 § (21)(R), 4/30/2009.]

Article XXII. Adoptions

10.10.790 Adoptions.

Tribal custom and practice does not recognize completely severing children from their connections to, or knowledge of, their biological parents, or extended Indian family. The Court however, shall seek to establish permanency and stability for children subject to the Tribal Court's jurisdiction in accordance with their best interest and determined on a case-by-case basis.

The purpose of adoptions shall be to give the adoptive child a permanent home and family who will assume all legal duties, rights, relationship, and decisions involving the child. To this end, the following shall apply and be contained in all adoptive orders and decrees:

(A) The adoptive parents and the adoptive child shall be treated under the law as if the relationship was that of a biological child and parent, except as set forth herein;

(B) The adoptive child shall have an absolute right, absent a convincing and compelling reason to the contrary, to accessing information and knowledge about his or her biological family and Tribal heritage;

(C) The adoptive child and members of the child's biological extended family (including parents) shall have a right of reasonable visitation with each other, subject to reasonable controls of the adoptive parents or by order of the Tribal Court;

(D) Adoption shall not serve to prevent an adopted child from inheriting from a biological parent in the same manner as any other natural child. The natural parents shall not be entitled to inherit from an adopted child in the same manner, as parents would otherwise be entitled to inherit. An adoptive child shall be entitled to inherit from adoptive parents, and vice-versa, in the same manner as if natural parents and child. [Res. 09-R-062 Title 1 § (22)(A), 4/30/2009.]

10.10.800 Consent.

(A) *When Not Required.* Written consent to an adoption is not required if:

- (1) The parent has abandoned the child;
- (2) The parent's rights have been terminated or modified;
- (3) The parent has relinquished parental rights; or
- (4) The parent has been declared incompetent.

(B) *When Required.* When written consent to an adoption is not waived per subsection [\(A\)](#) of this section, written consent to an adoption is required of:

- (1) The biological or adoptive mother;
- (2) The biological, adoptive, or acknowledged father;
- (3) The custodian, if empowered to consent;
- (4) The Court, if the custodian is not empowered to consent; and
- (5) The child, if over twelve (12) years of age. [Res. 09-R-062 Title 1 § (22)(B), 4/30/2009.]

10.10.810 Execution of consent.

Written consent to an adoption shall be executed and acknowledged before the Tribal Court. Consent shall not be accepted or acknowledged by the Tribal Court prior to ten (10) days after the birth of the child. An interpreter shall be provided if the person consenting to the adoption does not understand English. Consents of a child over the age of twelve (12) years shall be made orally either in open court or in chambers with only the judge and any other person(s) he or she deems necessary, and the child present. [Res. 09-R-062 Title 1 § (22)(C), 4/30/2009.]

10.10.820 Petition to adopt.

Any person may file a petition for adoption. The person proposing to adopt may initiate the petition. In the case of married persons maintaining a home together, the petition shall be the joint petition

of husband and wife, except that if one (1) of the spouses is the biological or adopted parent of the proposed adoptee, said parents shall not be required to join in the petition. [Res. 09-R-062 Title 1 § (22)(D), 4/30/2009.]

10.10.830 Contents of petition.

The petition for adoption shall include the following, to the best information and belief of the petitioner:

- (A) The full name, address, and Tribal affiliation of the petitioner;
- (B) The full name, the gender, residence, date and place of birth, and Tribal affiliation of the proposed adoptee;
- (C) The name by which the proposed adoptee shall be known if the petition is granted;
- (D) The basis for the Court's jurisdiction;
- (E) A full description and statement of value of all property owned, possessed or in which the adoptee child has an interest;
- (F) The relationship of the petitioner to the proposed adoptee; and
- (G) The names and addresses of any person or agency whose consent to the proposed adoption may be necessary. [Res. 09-R-062 Title 1 § (22)(E), 4/30/2009.]

10.10.840 Multiple adoptees.

Where there is more than one (1) proposed adoptee, and these proposed adoptees are siblings, only one (1) petition shall be required for the adoption of all or any combination of the siblings; provided, that each sibling proposed to be adopted, be named in the petition. [Res. 09-R-062 Title 1 § (22)(F), 4/30/2009.]

10.10.850 Signing.

All petitions must be signed and dated by the petitioner. [Res. 09-R-062 Title 1 § (22)(G), 4/30/2009.]

10.10.860 Notice.

Notice shall be provided in accordance with the notice procedures set forth in this Children and Family Code except that the Court may determine that it is unnecessary to give notice to specific individuals, including a parent whose parental rights have been modified. [Res. 09-R-062 Title 1 § (22)(H), 4/30/2009.]

10.10.870 Background checks and home studies.

When a petition for the adoption of a child is filed with the Tribal Court, the Tribal Court shall immediately request that the Social Services Department or other qualified agency conduct a fingerprint-based FBI criminal background check of the prospective adoptive parents and child abuse/neglect central registry checks of the prospective adoptive parents and all adults in the home and a home study on the petitioner and report on the child. The home study and report shall relate the circumstances of the home, the petitioner, and his or her ability, both physical and mental, to assume the responsibilities of a parent to the child. The home study shall contain other pertinent information designed to assist the Court in determining the best placement for the child. The home study will also address the issue of whether or not the home most closely resembles that of the child's culture, identity, and where applicable, his or her Tribal affiliation. The home study or report shall not be required where the proposed adoptee is an adult. [Res. 09-R-062 Title 1 § (22)(I), 4/30/2009.]

10.10.880 Timing.

No determination can be made on a petition for adoption until the home study and report has been completed and submitted to and considered by the Tribal Court. The home study shall be submitted to the Tribal Court no later than ten (10) days before the hearing. The home study and report may be consolidated into one (1) document. The Court may order additional home studies or reports, as it deems necessary. [Res. 09-R-062 Title 1 § (22)(J), 4/30/2009.]

10.10.890 Withdrawal of consent.

Any consent given under the provisions of this Children and Family Code may be withdrawn by the person or agency, which gave the consent at any time prior to the entry of a final decree of adoption. No reason need be stated and no hearing need be held on such a withdrawal. All withdrawals must

be in writing and notarized or witnessed by a Clerk of the Court, with the original being filed with the Tribal Court. [Res. 09-R-062 Title 1 § (22)(K), 4/30/2009.]

10.10.900 Vacating decree.

Within six (6) months after the entry of a decree of adoption, said decree may be vacated upon a petition being filed and a showing that the consent that made the adoption possible was obtained through fraud or duress. Upon such a showing, the Court shall vacate the decree and return the adopted person to that status he or she had prior to the entry of the decree. [Res. 09-R-062 Title 1 § (22)(L), 4/30/2009.]

10.10.910 Adoption preferences.

The preference of placement in adoption shall be applied to ensure the placement is the least restrictive setting appropriate to the needs of the child, and shall be on or near Tribal lands when possible. Adoption placement preferences shall be in the following order unless the Court determines that the child's best interests require deviation from the preferences:

- (A) A member of the child's immediate family, according to Tribal laws, customs, and traditions.
- (B) A member of the child's extended family, according to Tribal laws, customs, and traditions.
- (C) Another member of the child's Tribe.
- (D) Another Indian family.
- (E) Another suitable family. [Res. 09-R-062 Title 1 § (22)(M), 4/30/2009.]

10.10.920 Hearing procedures.

An adoption hearing shall be held within ninety (90) days of receipt of an adoption petition from the prospective parent(s). The Tribal Court shall conduct the hearing to determine if it is in the best interests of the child to be placed with the petitioners. In determining the best interests of the child, the Tribal Court shall examine:

- (A) Validity of written consent;

- (B) Modification of parental rights order;
- (C) Length of time of the child's dependency by the Court;
- (D) Special conditions of the child;
- (E) Parent communication with the child;
- (F) Minor's consent to adoption, if over twelve (12) years of age;
- (G) Home studies or other reports, including criminal and child abuse/neglect history checks; and
- (H) Order of preference of placement. [Res. 09-R-062 Title 1 § (22)(N), 4/30/2009.]

10.10.930 Findings.

Prior to entering an order of an adoption, the Court shall make a finding documenting the valid reason why the child cannot or should not be returned to the home of his or her parents. Where a child has been voluntarily relinquished, the Court shall make findings that the biological parents have voluntarily relinquished their child and there is a petition to the Court to remove the child from his/her home within six (6) months of the date the child lived with the specified relative from whom she is being removed, and there is a subsequent contrary to the welfare determination made by the Court. In making its adoption findings and determination, the Court shall consider whether or not the Tribe approves of the adoption. [Res. 09-R-062 Title 1 § (22)(O), 4/30/2009.]

10.10.940 Appearance and examination.

The petitioner and the proposed adoptee shall appear personally at the hearing. During the hearing, the Tribal Court shall advise the party(s) of their basic rights as provided herein. The judge shall examine all persons separately, and may, if satisfied that all other requirements of this article have been met, enter a final decree of adoption, or may place the person to be adopted, if a child, in the legal custody of the petitioner for a period not to exceed six (6) months prior to entering a final decree of adoption. [Res. 09-R-062 Title 1 § (22)(P), 4/30/2009.]

10.10.950 Denial.

If the Tribal Court is satisfied that the adoption will not be in the child's best interest, or finds that not all of the requirements of this article have been met, it may deny the petition and make any other order it deems necessary for the care and custody of the child. [Res. 09-R-062 Title 1 § (22)(Q), 4/30/2009.]

10.10.960 Consolidation.

Proceedings for modification of the parent-child relationship and proceedings for adoption may be consolidated and determined at one (1) hearing; provided, that all the requirements of this article are complied with. [Res. 09-R-062 Title 1 § (22)(R), 4/30/2009.]

10.10.970 Adoption assistance.

Prospective adoptive parents shall be notified of the potential availability of Title IV-E Adoption Assistance for children with special needs who are unlikely to be otherwise adopted. KCWS as further set out in the KCWS Plan shall set forth the required eligibility standards for adoption assistance and implement the provisions of the adoption assistance program and of potential eligibility for a federal tax credit under section [23](#) of the Internal Revenue Code of 1986 (Section 471(a)(33) of the SSA). [Res. 09-R-062 Title 1 § (22)(S), 4/30/2009.]

Article XXIII. EXTENDED FOSTER CARE

10.10.980 Extended Foster Care.

The purpose of this section is to enable the child to receive extended foster care services and help developing independent living skills, obtaining housing, or any other assistance with transition to adulthood. A child who chooses to participate in this program shall be ordered by the Court to be under the placement and care authority of the KCWS program, subject to the child's continuing agreement to participate in extended foster care services. Extended Foster Care is available to a child who turns eighteen (18) years old while under the jurisdiction of the Tribe and chooses to stay in dependency beyond the age of eighteen (18), up to the age of twenty-one (21).

(A) The child must agree to comply with all orders of the Court; and be one of the following:

- (1) Enrolled in a secondary education program or a secondary education equivalency program;
- (2) Enrolled and participating in a postsecondary academic or postsecondary vocational education program;
- (3) Participating in a program or activity designed to promote employment or remove barriers to employment;
- (4) Engaged in employment for eighty hours or more per month; or
- (5) Not able to engage in any of the activities described in this subsection due to a documented medical condition.

(B) The Tribal jurisdiction will terminate upon the Court's finding that: (1) The child no longer meets any of the criteria laid out in section 10.10.980(A); (2) The child has informed the Court they no longer want to participate in the program; or (3) The child has turned age twenty-one (21).

(C) At any point after the Court's jurisdiction has been terminated pursuant to section 10.10.980(B) but before turning age 21, the child may re-enter extended foster care, provided he or she voluntarily requests re-entry and meets one of the criteria set forth in section 10.10.980(A). The Tribal Court shall retain original jurisdiction over the child in extended foster care, therefore the Court will not hold an initial, determination, or placement and services hearing upon a child's re-entry.

(C) Status review hearings for a child participating in Extended Foster Care shall be reviewed every ninety (90) days and no less frequently than every six (6) months. Upon review, the Court shall determine and make the following findings:

- (1) Whether the placement of the child continues to be necessary and appropriate;
- (2) Whether the child continues to be eligible for extended foster care services by meeting one of the requirements as specified in section 10.10.980(A);
- (3) The Transitional Independent Living Plan contains appropriate and meaningful goals and services to assist the child in developing independent living skills;
- (4) KCWS has assisted the child in meeting the requirements for eligibility;
- (5) KCWS is assisting the child in meeting the child's goals as outlined in the Transitional Independent Living Plan;
- (6) The Court shall order a Permanent Plan of reunification, adoption, guardianship, and relative placement, or another planned permanent living arrangement. The Court may order another planned permanent living arrangement; provided, that KCWS has documented to the Court why KCWS has ruled out other permanency goals as not in the child's best interest before

recommending another planned alternate living arrangement and a compelling reason, on a case-by-case determination, for such alternative plan.

- (7) The likely date by which the child will achieve permanence;
- (8) KCWS has made reasonable efforts to finalize the Permanent Plan;
- (9) The child is making overall progress toward full independence.

Article XXIII. PLACEMENT OF CHILD IN SHORT-TERM RESIDENTIAL TREATMENT PROGRAM

10.10.990 Timing.

The Tribal Court must review and approve the initial placement and any subsequent placements of a child in a Short-Term Residential Treatment Program within sixty (60) days of the date of that placement. The review and approval of such a placement may occur in conjunction with an already scheduled hearing for the child if it occurs within the sixty-day (60-day) timeframe. If the placement occurs in a time period that is outside of an already scheduled hearing within 60 days, a special hearing must be held to review and approve the placement.

10.10.1000 Special Hearing and Determinations

(A) In the case of a child who is placed in a Short-Term Residential Treatment Program the purpose of the special hearing is to determine the following:

- (1) The ongoing assessment of the child's strengths and needs has been conducted by a qualified individual in collaboration with the Permanency Team that included family members, including the parents, and other important persons to the child, and relevant service providers;
- (2) The assessment supports the determination that the needs of the child cannot be met by the family or through placement in a foster family home;
- (3) The placement in a Short-Term Residential Treatment Program provides the most effective and appropriate level of care for the child in the least restrictive environment in spite of the placement preferences of the family if they should differ;

(4) The placement in a Short-Term Residential Treatment Program is consistent with the short- and long-term goals of the child as specified in the permanency plan for the child;

(5) The placement addresses the specific treatment or service needs of the child and specifies the length of the time the child is expected to need the treatment and services; and (6) The KCWS has made reasonable efforts to prepare the child to return home or to be placed with a fit and willing relative, a legal guardian or in a foster family home.

(B) Where the Court approves the continued placement of the child in a Short-Term Residential Treatment Program the Court shall state in writing the factual basis for the following findings:

(1) The needs of the child cannot be met through placement in a home-based family setting;

(2) The placement provides the most effective and appropriate level of care for the child in the least restrictive environment;

(3) The placement is consistent with the short- and long-term behavioral health goals and permanent plan of the child; and

(4) The placement is approved.

Article XXIV. FAMILY MAINTENANCE CASES

10.10.1010 Family Maintenance

A Family Maintenance Case is to provide time-limited, in-home protective services that prevent or remedy neglect, abuse or exploitation and prevent the separation of child(ren) from families when the child(ren) can safely remain in the home.

(A) In the event a child is not removed or detained, the initial hearing shall be held before the end of the fifteenth (15th) court day following the filing of the Petition.

(B) Family Maintenance services are limited to six (6) months and may be extended in periods of six (6) month increments if it is demonstrated that the case plan can be achieved within the extension.

(C) The Family Maintenance services shall be terminated when the child is found not to be under the jurisdiction of the Court under any one of the following circumstances.

- (1) The Court dismisses the child welfare proceeding;
 - (2) The effective date of closure of the family maintenance services case will be the date of the hearing at which the child welfare proceeding is dismissed;
 - (3) The Court has ordered that family reunification services or permanent placement services be provided;
 - (4) The effective date of closure of the family maintenance services case will be the date of the hearing at which services are ordered;
 - (5) The Court declares the child is emancipated;
 - (6) The child reaches age eighteen (18); or
 - (7) The child is no longer a foster care candidate (i.e., no longer at imminent risk of removal).
- (D) If at any point during Family Maintenance services, the family does not comply, or Family Maintenance services are otherwise unsuccessful at resolving the allegation in the Petition, the social worker may file a new petition with the Court referring to the previously sustained petition and allege to the Court that the prior disposition was ineffective in ameliorating the situation requiring the Family Maintenance services.
- (1) The Petition should then either be dismissed or
 - (2) Require a new disposition hearing be held.

Article XXIV. Appeals

10.10.1020 Who can appeal.

Any party to a Tribal Court proceeding may appeal a final Court order. [Res. 09-R-062 Title 1 § (23)(A), 4/30/2009.]

10.10.1030 Time limit for appeal.

Any party seeking to appeal a Court order shall file a written notice of appeal with the Court no later than twenty (20) days after notice of the final order has been given. [Res. 09-R-062 Title 1 § (23)(B), 4/30/2009.]

10.10.1040 Appellate Panel.

Upon receipt of a notice of appeal to the Tribal Court, an Appellate Panel, consisting of three (3) appointed judges, will convene to hear the appeal within a reasonable time. [Res. 09-R-062 Title 1 § (23)(C), 4/30/2009.]

10.10.1050 Record.

For purposes of appeal, a record of proceedings shall be made available to the child, the child's parent, guardian or custodian, the child's counsel or advocate and others upon court order. The appealing party shall pay costs of obtaining this record. [Res. 09-R-062 Title 1 § (23)(D), 4/30/2009.]

10.10.1060 Stay of appeal.

A court order may be stayed by such appeal. [Res. 09-R-062 Title 1 § (23)(E), 4/30/2009.]

10.10.1070 Conduct of proceedings.

All appeals shall be conducted in accordance with the Tribe's Rules of Court (Chapter [3.10](#) KTC) as long as those provisions are not in conflict with the provisions of this Children and Family Code. [Res. 09-R-062 Title 1 § (23)(F), 4/30/2009.]

10.10.1080 Administrative appeals.

Grievances and appeals from KCWS administrative decisions shall be referred to the Peacemaker Mediation Forum for resolution pursuant to that program's guidelines and the fair hearing procedures set forth in the KCWS Plan. [Res. 09-R-062 Title 1 § (23)(G), 4/30/2009.]

