

HPUL CHILDREN AND FAMILIES CODE

Habematolel Pomo of Upper Lake  
Children and Families Code

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## **SECTION 1. FINDINGS AND PURPOSE**

### **A. Findings**

- (1) Preservation of Habematolel Pomo of Upper Lake (HPUL) families is critical to the survival of the Tribe and Pomo cultural traditions.
- (2) The Tribe has an obligation and duty to support, preserve, and reunify Pomo families.
- (3) The Tribe has an obligation to keep Pomo children connected to their community, their culture, and their relatives.
- (4) The Indian Child Welfare Act, 25 U.S.C. §1901 et. seq., gives the Tribe authority to advocate and enforce the Tribe's law in state child custody cases.
- (5) The Tribe, as a sovereign government, should exercise its jurisdiction to protect Pomo children.

### **B. Purpose**

Therefore, this Code shall be liberally construed and interpreted to fulfill the following purposes whenever possible:

- (1) To secure for each child coming before the Court the care, guidance, and control--preferably in her or his own home--that will serve the welfare and the best interests of the child, his or her family, and the HPUL community;
- (2) To preserve and strengthen the unity of the Indian family, preferably by only separating children from their parents when absolutely necessary, and if necessary to prioritize placing children with their extended family and/or families willing to keep the child connected to their community and culture;
- (3) To preserve and strengthen each child's Tribal, cultural, or ethnic identity whenever possible;
- (4) To take such actions that may be necessary and feasible to prevent the abuse, neglect or abandonment of children; and,
- (5) To secure the rights of and ensure fairness to the children, parents, guardians, custodians or other parties who come before the court.

## **SECTION 2. DEFINITIONS**

A. "Abandonment" – Means the failure of the parent, guardian or custodian to provide a normal parental relationship with the child, when the parent has no intention or capability of resuming a parental relationship with the child in the future. Failure to maintain a normal parental

relationship with the child without just cause for a period of two years shall constitute prima facie evidence of abandonment. Abandonment cannot be proven based on a parent's imprisonment or criminal sentence alone.

B. "Abandoned Infant" – Means a child under one (1) year of age, that has been left without any indication of the parents' identity, and the circumstances indicate an intent to permanently abandon the child.

C. "Abuse" – Means the infliction of physical injury on a child; sexual abuse or sexual exploitation of a child; or emotional or mental injury including, excessive verbal aggression, exposure to illegal drugs in the home, or exploitation which rises to a level that it affects a child's mental health or emotional well-being.

D. "Adoptive Placement" – Means the placement of a child who is legally free for adoption with a family who is certified by a court of competent jurisdiction for adoption.

E. "Adult" – Means a person who is 18 years of age or older.

F. "Aggravated Circumstances" – Means any factor involved in the commission of an act of abuse or neglect that increases its enormity or adds to the injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

G. "Best Interests of the Child" – The principles governing a HPUL's child's best interests shall include the following:

(1) A child has the right to be treated with dignity and respect and to be in a safe and supportive environment free from abuse and neglect.

(2) A child needs love, nurturing, protection and stability. A child must have a safe and nurturing home environment offering emotional support, comfort, the basic needs of nutrition, clothing, shelter, medical care, including necessary behavioral health services, and protection from danger, violence, or exposure to other harmful conduct present in their home including but not limited to drug or alcohol use that contributes to child maltreatment.

(3) A child's need for family. A child must have connection to loving family members. Although not all children have the benefit of safe, nurturing family care, nothing can replace the primary role of loving parents and family in a child's life.

(4) A child's need for identity and development. A child must develop self-identity and awareness of his/her unique role within the larger community, including the child's cultural community. This may include participation in family, community and cultural activities including speaking one's native language, and/or having opportunities and encouragement to pursue education and enriching experiences.

(5) A child's need for happiness. A child cannot be happy unless his/her primary needs for safety, nutrition, clothing and shelter are met; but a child also needs opportunities for play

and recreation, leisure time and other activities the child enjoys including possession of toys and other personal items of importance to the child.

H. “Child” – Means an individual who is under the age of 18 years of age, though the Tribe may continue to provide services for youth through age 21.

I. “Child In Need Of Protection” – Means a child who is adjudicated to be:

(1) In need of proper and effective parental care or control and has no parent or guardian or custodian able or willing to exercise such care or control;

(2) A child who has been abandoned by his parents, guardian or custodian;

(3) A child who has been neglected by his parents, guardian or custodian;

(4) A child who has been abused by his parent(s), guardian(s) or custodian(s); or

(5) A child who has committed delinquent acts as a result of parental pressure, guidance, or approval.

J. “Come to Court Warrant” – Means a warrant that allows an officer of the court to bring a respondent to court if they have not appeared for a scheduled hearing for which they received notice and summons.

K. “Counsel” – Means an advocate or attorney. An attorney is licensed by a state bar and is a member of the HPUL Bar. An advocate is a lay person who is not a licensed attorney but is a member of the HPUL Bar authorized to advocate in HPUL court.

L. “Court Judge” – Means any duly appointed judge of the HPUL exercising jurisdiction under this chapter.

M. “Custodian” – Means a person, other than a parent or guardian, to whom legal custody of the child has been given but does not include the person that has only physical custody.

N. “Custody or Legal Custody” – Means the status created by order of the HPUL Court or any other Court of competent jurisdiction that vests the following:

(1) To have the child live in the home.

(2) The responsibility to provide the child with food, shelter, education and ordinary medical care, and the authority to consent to surgery or extraordinary care in an emergency.

O. “Domicile” – Means a person's permanent home, legal home, or main residence. The domicile of a child is generally that of the custodial parent or guardian. Domicile includes the intent to establish a permanent home or where the parent or guardian considers being their permanent home. Domicile for purposes of jurisdiction is established at the time of the alleged acts.

P. "Foster Home" – Means placement with a family whose home has been licensed to accept emergency placements of children at any hour of the day or night.

Q. "Extended Family" – Extended family ties are based on blood lines, marriage, friendship, and caring. Although grandparents (including great and great-great), aunts, uncles, siblings, cousins, "in-laws" and "step" relations are all extended family, any member of the tribal community who is reliable, responsible, loving, and willing to care for a child may be considered extended family.

R. "Family in Need of Services" – Means:

(1) A family wherein there is allegedly a breakdown in the parent-child relationship based on the refusal of the parents, guardians, or custodian to permit a child to live with them or based on the child's refusal to live with his parents, guardian or custodian.

(2) In any of the following circumstances:

(a) The conduct complained of presents a clear and substantial danger to the child's life or health and the intervention of the Court is essential to provide the treatment, rehabilitation or services needed by the child or his family;

(b) The child or his family are in need of treatment, rehabilitation or services not presently received and the intervention of the Court is essential to provide this treatment, rehabilitation or services; or

(c) The conduct complained of presents a clear and substantial danger to the parent, guardian or custodian's life or health and the intervention of the Court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

S. "Family Team Decision Meeting" (FTDM) – Means a confidential meeting facilitated by an impartial mediator or tribal social service worker to involve the family in making important decisions at all relevant stages of the court intervention under this chapter. Specific issues for the FTDM process include placement, services and related issues.

T. "Support Family" – Means the people who provide substitute care to a child who is removed by court order or a voluntary placement agreement from his or her home. This family cares for the child while also supporting the child's relationships with the parents and extended family. They provide the foster care to the child.

U. "Guardianship" – Means a judicially created relationship between child and caretaker which is intended to be long-term 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.

V. "Indian Child Custody Proceeding" – Means all proceedings, whether voluntary or involuntary, involving out-of-home placement or foster care of an Indian Child.



W. "Neglect" – Means failing to provide a child with adequate food, clothing, shelter, medical care, education or supervision. Knowingly, intentionally or negligently placing the child in a situation that may endanger his life or health.

V. "Parent" - Includes a natural or adoptive parent. Unwed fathers may be a legal parent under this definition if:

(1) The man petitions a court of competent jurisdiction, the Tribe supports the petition and the court duly determines the man qualifies and is granted the right to adopt the child;

(2) A man, who by order of filiation, paternity, or by biological proof of paternity (including DNA), is determined to be the father of the child in any court of competent jurisdiction; or

(3) A putative father may be ordered to submit to a DNA test.

X. "Reasonable Efforts" – Means the responsibility of the Tribe to provide individually specific services in support of reunification which are conducive to altering individual and family behaviors and attitudes that pose a risk to children. Services should, whenever possible, be culturally specific and always remedial in intent.

Y. "Suspension of Parental Rights" – Means when a child is released by the parents or the court for a long term guardianship or customary adoption, but parental rights are not terminated.

Z. "Termination of Parental Rights" – Means a judgment by a court of competent jurisdiction that, after trial and deliberation, it is in the best interest of a child to permanently terminate a respondent's legal rights to custody and control over the child and to permanently place the child in the custody and care of a person suited to assume the parental responsibilities of custody and care of a child. Because of the effect this action has on the parent-child relationship this should be a solution of last resort reserved for those unique circumstances where any continued contact or relationship with a parent would be severely detrimental to the well-being of the child

aa. "Tribe" or "HPUL" – Means the Habematolel Pomo of Upper Lake.

bb. "Tribal Children and Human Services" – Means the HPUL tribal social services department.

cc. "Tribal Court" – Means the Tribal Court of Habematolel Pomo of Upper Lake.

### **SECTION 3. JURISDICTION**

The Tribal Court may exercise jurisdiction over all citizens and those eligible for citizenship of the Tribe, regardless of their domicile. The Tribal Court may exercise jurisdiction over all children on tribal land to ensure their safety. The Tribal Court has jurisdiction over all adoptions in which the child being adopted is a citizen of, or eligible for citizenship in, the Tribe.

#### **SECTION 4. INTERVENTION AND TRANSFER JURISDICTION**

A. The Agent in charge of receiving notice from the state for child custody proceedings that may involve a tribal child shall coordinate with the enrollment department to get an answer back to the state court within four weeks.

B. HPUL shall intervene in all ICWA cases involving member children and those deemed qualified for tribal enrollment.

C. Acceptance of transfer of jurisdiction to Tribal Court in ICWA cases shall be at the sole discretion of the Tribal Court.

(1) If either a parent or the Tribe wishes to transfer a state case to tribal court, the tribal attorney or representative, or parent attorney, shall file a petition with the Tribal Court requesting an order to transfer the case. Notice of this petition shall be served upon all parties to the state child custody proceeding. The petition shall include the following relevant information:

(a) The location and current address of the child;

(b) The domicile of the parents;

(c) Whether either parent objects to transfer or have had their parental rights terminated; and

(d) Any records available to the party moving to transfer that give the Tribal Court information about the child, the case, and the ability of the Tribal Court to provide services for the child. Confidential reports shall be kept confidential by the court.

(2) Tribal Court Hearing. The Tribal Court may conduct a hearing to determine if the Court should accept transfer immediately upon receipt of service of a petition to transfer.

(a) If there is no parental objection, the policy of the Tribe is to accept transfer cases.

(b) The Court shall issue an order accepting transfer, after which the tribal attorney, representative or parent attorney may petition the state court to transfer the case.

(3) A decision will be issued (with or without hearing) within 14 days of the courts receipt of the transfer petition.

D. Transfer to State Court or Other Tribal Court. In any proceeding within the jurisdiction of the Tribal Court, the Court may transfer the proceedings to an appropriate state or tribal court when concurrent jurisdiction exists or upon a finding that another jurisdiction has a significant interest in the outcome and transfer of jurisdiction would be in the best interest of the child. The policy of the Tribe is to not transfer out cases involving children who are citizens of the Tribe.

The Tribal Court may transfer cases to other states or tribal courts involving children who are not citizens or eligible for citizenship in HPUL.

## **SECTION 5. PLACEMENT PREFERENCES FOR STATE COURTS**

A. Tribal Placement Preferences. Under 25 U.S.C. 1915(d), a state court must follow the tribal placement preferences, if they are different than the preferences listed in 25 U.S.C. 1915(a) and (b). The HPUL preferences are as follows:

- (1) A member of the child's extended family, according to tribal laws, customs and traditions.
- (2) Another member of the child's Tribe.
- (3) Another Pomo family.
- (4) A non-Indian foster home located on or near Tribal lands and licensed or approved by the Tribe.
- (5) A non-Indian foster home located off Tribal lands and licensed or approved by the Tribe.
- (6) An institution for children approved by the Tribe or operated by an Indian organization that has a program suitable to meet the child's needs.

The Tribe reserves the right to change these preferences, or to pass a resolution regarding its preference for an individual child.

## **SECTION 6. INTERGOVERNMENTAL RELATIONSHIPS**

A. The Tribal Court is authorized to cooperate fully with any federal, state, tribal, public or private agency in order to participate in any diversion, rehabilitation, or training programs and to receive grants-in-aid to carry out the purposes of this Chapter. This authority is subject to the approval of the Executive Council if it involves an expenditure of tribal funds.

B. The Tribal Court shall utilize such social services as may be furnished by any tribal, federal or state agency provided it is economically administered without unnecessary duplication and expense.

C. The Tribal Court may negotiate contracts with tribal, federal or state agencies and/or departments on behalf of the Executive Council for the care and placement of children whose status is adjudicated by the Tribal Court subject to approval of the Executive Council before the expenditure of tribal funds.

D. HPUL may enter into such intergovernmental agreements with the State of California, other states 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's Code.

## **SECTION 7. FULL FAITH AND CREDIT; CONFLICT OF LAWS**

A. State Court Orders. State child custody orders involving children over whom the Tribal Court may assert jurisdiction will be enforced following general rules of comity. The Tribal Court shall conduct an independent review of such state proceedings to determine if:

- (1) The state court exercised proper jurisdiction; and
- (2) The state court adhered to and properly applied the provisions of the Indian Child Welfare Act, 25 U.S.C. § 1901-1963, in the child custody proceeding; and
- (3) Due process was provided to all interested parties participating in the state proceeding; and
- (4) The state court proceeding does not violate the public policies, customs or common law of the Tribe.

B. Tribal Court Orders. Court orders of other tribal courts involving children 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 jurisdiction, and;
- (2) Due process was accorded to all interested parties participating in the other tribal court proceeding.

## **SECTION 8. GENERAL POWERS OF THE COURT IN CHILD WELFARE PROCEEDINGS**

A. Caption Headings. The captions for all child welfare actions shall be titled "In re the Matter of (child's initials), a Minor."

B. Court Records. The Court shall maintain a confidential record of all proceedings under this Code in records labeled "Records of the HPUL Tribal Court." The confidential records of proceedings under this Code shall not be open to public inspection.

C. 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 or persons having her or his custody or the child welfare or probation office, or she or he may be ordered to remain in an appropriate placement provided by the Tribe or designated by the Court.

D. Medical care and examinations. The Tribal Court may order necessary medical examinations and care as may be required for children under its jurisdiction.

E. 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.

F. Removal from Tribal Lands. The Court may permit removal of a child under its jurisdiction 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.

## **SECTION 9. DUTY TO REPORT CHILD ABUSE AND NEGLECT**

A. Duty. Any person who has a reason to suspect that a child has been abused, neglected or abandoned shall immediately report the abuse, neglect or abandonment to Tribal Children and Human Services. If requested, those persons reporting shall remain anonymous.

B. Mandatory Reporters. Those persons who are mandated to report suspected abuse, neglect, or abandonment to the proper authorities include 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, clerk of the court, or other judicial system official. If a mandatory reporter fails to report known abuse, neglect, or abandonment they can face a civil fine of up to \$500 dollars.

C. 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.

## **SECTION 10. INVESTIGATION, REMOVAL, AND NOTICE**

A. Investigation. All reports of alleged child abuse, neglect, or abandonment shall be investigated by Tribal Children and Human Services or other appropriate agency. Reports deemed to be an emergency will be investigated within 24 hours, all other reports will be investigated within five days unless the Tribal Court directs otherwise.

B. Authority for Emergency Removal and Placement in Temporary Custody. If the person investigating the report of abuse, neglect, or abandonment finds the grounds for removal, listed in subsection C below have been met, such persons may remove the child, from the home in which the child is residing and place the child in a temporary receiving home or other appropriate placement. If the grounds for removal listed in subsection C below have not been met, the person investigating the report must obtain a court order before removing the children.

C. Grounds for Emergency Removal. No child shall be removed from the home of the child's parent, guardian, or custodian without the consent of the parent, guardian, or custodian absent a specific order of the Court, as described in subsection D, except as follows:

(1) When failure to remove the child may result in a substantial risk of death, permanent injury or serious emotional harm; or

(2) When the parent, guardian or custodian is absent and it appears from the circumstances, that the child is unable to provide for his or her own basic necessities of life, and that no satisfactory arrangements have been made by the parent, guardian or custodian to provide for such necessities.

D. Grounds for Court Ordered Removal. The Court may order a removal based on a petition from Tribal Children and Human Services. The petition must state the reasons for the removal, and the Court must find under clear and convincing evidence that the continued custody of the child by the parent is causing serious emotional or physical harm.

E. Notice and Service of Notice of Removal.

(1) Notice to the Tribal Court. After a child is removed from their home, the person who removed the child shall attempt to contact the Court within four hours or, if the children are removed after 5 pm, within one hour of the Tribe's normal business hours the next day. The attempt to contact the Tribal Court shall be documented. Actual notice to the Tribal Court shall be made, by the removing person, no later than the close of business next Tribal Court working day.

(2) Notice to Parent, Guardian or Custodian. The Tribal Court or Tribal Children and Human Services Department shall make all reasonable efforts to notify the parents, guardian or custodian, within 12 hours of the Tribal Court knowing the child was removed. Reasonable efforts shall include personal, telephone, and written contacts at their residence, place of employment, or to the location where the parent, guardian or custodian is known to frequent with regularity. If the parent, guardian, or custodian cannot be found, notice shall be given to members of the extended family of the parent, guardian or custodian and/or the extended family of the child.

## **SECTION 11. CASE PLANS AND EVIDENCE**

A. Case reports and plans. Tribal Children and Human Services or other agency designated by the court shall develop a case plan in all cases. 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.

- (1) The court, either on its own motion or if so requested by the child, the child's parent or guardian, or other interested party, shall require that the person who wrote the report or prepared the material appear as a witness and be subject to both direct and cross-examination.
- (2) The case plan shall be made available to the court, and the parties as deemed appropriate by the court at least three (3) court days prior to the hearing at which it will be considered.

B. Evidence. The Tribe's rules of evidence will generally govern in all phases of a child welfare case except adjudication and the termination of parental rights proceedings. In all other proceedings, hearsay evidence is allowable but no finding of fact can be based solely on hearsay evidence.

C. Confidentiality. All matters under this Code shall be confidential and heard in closed Tribal Court proceedings, excluding all persons except parents, guardians, extended family members, representatives for the child, witnesses called by the Tribal Court, tribal social workers and with the permission of the Tribal Court others having a direct interest in the matter.

## **SECTION 12. FILING A CHILD WELFARE PETITION**

### **A. Grounds for the Petition.**

A Child Welfare Petition (the "Petition") may be filed by the Tribal Children and Humans Services Department when a child is known or believed to be abused, neglected, or abandoned. The Petition shall state the specific facts concerning:

- (1) the name, address, gender and age of the child;
- (2) the names and address of the child's parents and any custodians of the child;
- (3) the names and addresses of any other person or Tribe with an interest in the child;
- (4) the nature and extent of the child's alleged injury, abuse, neglect, or abandonment;
- (5) 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);
- (6) any information that may be helpful in identifying the cause of the child's alleged injuries or neglect;
- (7) a statement identifying of what Tribe(s), if any, the child is a member or eligible for membership; and

(8) the 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 (subject to applicable child welfare confidentiality policies), the facts necessitating placement, and the date and time of the placement. If the child has been removed from the home, the petition must be filed within twelve (12) hours of the removal. He or she must be returned home if a hearing has not been held within forty-eight (48) hours excluding weekends or holidays of the date of removal.

#### B. Notice upon Filing of a Petition.

Upon the filing of a Petition, the Judge or Clerk of the Tribal Court shall issue a notice which may be in the form of a summons directing the parents or guardians of the child to be present in Court for hearing at the time and place stated in the notice.

The Notice shall contain a statement, when appropriate, that the suspension or termination 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 have an attorney present at the hearing shall be on the Notice.

If the whereabouts of the parents or guardians are unknown, the Tribal Court may proceed to take any action to protect the child. Any parent or guardian served with notice who fails to appear without reasonable cause may be subject to contempt of Tribal Court and a court warrant may be issued. The returns or proofs of service shall be filed in the record of the case.

#### C. Service of Summons.

(1) Summons shall be served personally, at least 24 hours before the time fixed in the summons for the appearance of the person served.

(2) If the parents, guardian, or other legal custodian of the child required to be summoned cannot be found notice will be given in the following manner:

(a) 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.

(b) When 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.



### **SECTION 13. PARENTAL SUPPORT OF CHILDREN WHILE THEY ARE OUT OF THE HOME**

A. The Tribe believes that if a child is out of the home due to the neglect or abuse by a parent, the parent should contribute to the cost of the child's wellbeing.

B. In any case in which a child is or has been declared a dependent child of the court pursuant to Section 14, the court may order the Tribal Child and Family Services Department provide to the court a declaration of its costs and expenses for the benefit, support, and maintenance of the child.

C. The court may order the parent to contribute to the cost of the support of the child. The court may find there is good cause to not order a parent to pay if:

- (1) the parent's income is such that any contribution would cause the parent to lose their housing or transportation to work; or
- (2) the parent is fully complying with the Department's case plan for reunification; or
- (3) the parent is participating in a chemical dependency or alcohol rehabilitation program.

D. The Court may only order reasonable costs directly related to the declaration from the Department, and may not order punitive costs under this section.

### **SECTION 14. SHELTER CARE HEARING**

A. Timing.

- (1) The Shelter Care Hearing regarding the removal or detention of a child shall be held forty-eight (48) hours following the filing of the Petition.
- (2) In the event a child is not removed or detained, the Shelter Care Hearing shall be held within seventy-two (72) hours following the filing of the Petition.

B. Purpose.

- (1) The purpose of the Shelter Care Hearing is to determine whether probable cause exists that the allegations in the petition are true and to determine whether out of home placement is necessary for the protection of the child.
- (2) During the hearing, the Tribal Court shall talk to the parties about reason for the hearing and describe their rights.

C. Evidence.

- (1) The Tribal Court will receive any agency reports; and the parents will admit or deny allegations of abuse or neglect.

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

**D. Findings.**

(1) The Tribal Court shall make specific findings as to whether and why staying in the home is be contrary to the welfare of the child, and whether and why the out-of-home placement is necessary for the protection of the child and in the child's best interest.

(2) The Tribal Court shall specify whether reasonable efforts have been made to prevent out-of-home placement.

(3) The Tribal Court shall specify the terms of visitation between the parent and child, with the assumption that visitation shall be often and liberal to support and encourage reunification. Visitation may also be ordered for siblings, grandparents, and other important adults in the child life, such as, but not limited to aunts, uncles, and cousins.

**E. Possible Outcomes of the Shelter Care Hearing.**

(1) The Child Welfare Petition may be dismissed and the child remains or is returned to home with direction to the parents about 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 a Jurisdiction Hearing, mediation or family team decision making meeting;

(3) The child may be continued in the child's out-of-home placement under court supervision pending the Jurisdiction Hearing; or

(4) The child may be continued in the child's out-of-home placement under court supervision pending a mediation or family team decision making meeting.

**F. Rights of Parties.** All parties have a right to be represented by a lay 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 prior to 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.

**SECTION 15. 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, in the

most family-like setting possible, the Tribe hereby establishes the following placement preferences, in the order of preference:

- (1) A member of the child's extended family, according to tribal laws, customs and traditions.
- (2) Another member of the child's Tribe.
- (3) Another Pomo family.
- (4) A non-Indian foster home located on or near Tribal lands and licensed or approved by the Tribe.
- (5) A non -Indian foster home located off Tribal lands and licensed or approved by the Tribe.
- (6) An institution for children approved by the Tribe or operated by an Indian organization that has a program suitable to meet the child's needs.

Within each placement preference category, preference shall be given to a placement on or near Tribal lands, and close to family for reunification purposes. 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 that such deviation is in the best interest of the child.

## **SECTION 16. CHILD REPRESENTATION**

### **A. Child Advocate Appointments.**

- (1) The Executive Council may develop and implement a Court Appointed Special Advocate (CASA), Guardian Ad Litem (GAL), or may reach agreements with local CASA programs and state courts regarding the appointment of CASAs to Tribal Court.
- (2) A CASA or GAL must be trained in the specific values and culture of the HPUL in order to represent the best interests of a child in tribal court.
- (3) If the judge feels a child would be better represented by a lawyer, and is old enough to express their own interests, the Tribal Court has the authority to appoint a lawyer to the child.
- (4) A child who is twelve years old is presumed to speak in their best interests, and their concerns will be conveyed to the court by their representative. If the GAL or CASA believes the child's stated interests are contrary to their best interests, the court will appoint counsel for the child to present their stated interests.

## **SECTION 17. DIVERSION/FAMILY TEAM DECISION MAKING**

A. Diversion. At any time in the proceedings, the Tribal Court judge may order the case stayed or suspended pending successful completion of a diversion plan or program. This may include a family drug treatment court or other programs designed to help the family recover and reunify. The Court shall retain jurisdiction over the case.

B. Peacemaker/Family Team Decision-making.

(1) Family Team Decision-making (FTDM) is the best way to come to a mutually agreed upon resolution for a child, to identify possible family placements for the child, and to identify other adults who would be willing to help the parents and child. The Tribal Court judge may order the child's family to participate in FTDM, to provide the child's family with an opportunity to establish a plan that will ensure the safety of the child. The FTDM shall be conducted and facilitated according to that program's written guidelines. This Code recognizes a preference for family decision making opposed to judicial intervention and determination, there by encouraging families to take seriously the issues with which they are presented.

(2) Once the parties have reached a mediated/facilitated plan for the child, 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, approve with minor modifications, or disapprove of the plan.

(3) If the judge disapproves the plan, the judge has the discretion to either send the family back for an additional conference or mediation, or may set the case for hearing. If the judge approves the plan, he or she converts the plan, including any judicial modifications, into a valid Tribal Court order.

## **SECTION 18. JURISDICTION OR ADJUDICATION HEARING**

A. Timing. Subject to (C) (6) below, the Jurisdiction Hearing shall be held no later than fourteen (14) days following conclusion of the Shelter Care Hearing or any family team decision making, whichever occurs later.

B. Purpose. The purpose of the Jurisdiction Hearing is for the court to adjudicate whether there is enough substantiated evidence for the Tribal Court to have jurisdiction over the family. In order to do so, the issues in the petition and subsequent investigations must be proven under a clear and convincing evidence standard that the Court's involvement is necessary to protect the well-being of the child.

C. Admit or Deny. A parent may admit or deny the allegations in the petition. If the parent denies the allegations, this shall not be held against them in the Tribal Court's findings. If the parent denies the allegations, the Tribal Court will hold a contested jurisdiction hearing and weigh the evidence presented to it. The Tribal Court will make a decision regarding the allegations based on the evidence presented in Tribal Court. The evidence must make a clear and convincing case that the continued jurisdiction of the court is necessary to protect the well-being of the child. The Tribal Court must also make the findings listed in section (D). The burden is on the petitioners to prove their case. If the petitioners do not prove their case, the Tribal Court must end its jurisdiction in the case. If a parent admits to the allegations, the court must still make the findings in section (D).

D. Additional Findings.

(1) The Tribal Court shall find the allegations of the petition to be true or dismiss the petition based on the evidence presented.

(2) Jurisdictional matters dependent on the age and residence of the child shall be deemed admitted by or on behalf of the child, unless specifically denied prior to the Jurisdiction Hearing.

(3) When it appears that the evidence presented at the hearing discloses facts not alleged in the petition, the Tribal Court may proceed immediately to consider such additional or different matters raised by the evidence.

(4) In such event, the Tribal Court, on the motion of an interested party or on its own motion, shall order the petition to be amended to conform to the evidence. If the amendment results in a substantial departure from the original allegations in the petition, the court shall continue the hearing on the motion of any interested party or on its own motion, if it finds such continuance to be in the best interests of the child or any other party to the proceedings materially prejudiced by the change in allegations.

(5) The burden of proof lies with the petitioner (the person filing the petition). The petitioner must prove that the allegations raised in the petition are more likely true than not, that is, by a clear and convincing standard of evidence, and that the best interests of the child and the child's Tribe will be served by continued court intervention.

(6) The court must also make findings regarding 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.

E. Adjudication Order. If the Court finds that continuation of the jurisdiction of the Court is necessary, the Court shall issue a written adjudication order with the necessary findings from this section. The Court may also continue the current placement and/or parenting time from the shelter care hearing as necessary. A minute order with all of this information must be given to the parties at the end of the hearing. A formal written order must be mailed to the parties within three (3) days. The Order must include the date of the disposition hearing, which may happen immediately after the jurisdiction hearing, but must be done within seven (7) days.

## **SECTION 19. PLACEMENT AND DISPOSITION OR SERVICES HEARING**

A. Timing. The Placement and Disposition Hearing shall be held no later than seven (7) days after issuance of the adjudication order, and may be held directly after the jurisdiction hearing. The Tribal Court shall hear evidence regarding the ways to reunify the family and to protect the best serving the interests of the child and his or her tribe.

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

C. Findings.

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

(2) The Tribal Court shall determine:

(a) The appropriate disposition of the case and long-term plan for the child;

(b) Where the child should be placed under Section 15 of this code;

(c) Whether the proposed case plan reasonably address the problems and needs of the child and parent;

(d) Whether reasonable efforts were made to eliminate or prevent the need for removal from the child's home.

(3) The Tribal 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.

(4) The Tribal Court may find that the child shall remain out of the home. The grounds for continued removal are the likelihood of continued abuse, neglect or abandonment that have not yet been addressed by the parents.

(5) The Tribal 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.

(a) The Tribal Court may order a trial home visit, for no more than six (6) months, unless the Tribal Court authorizes them for a longer period. The Court order must explicitly extend the trial home visit.

(b) While the child is on a trial home visit, the "clock stops" for the mandatory termination or modification petition filing deadline ("15 of the last 22 months"). If the trial home visit is over seven (7) months long, the clock starts over.

(6) The Tribal 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 Tribal Court shall specify what steps the parents, guardians or custodians shall take to demonstrate their abilities to care for their child and specify what factors the court will consider at a subsequent hearing to determine whether or not the child should be returned home.

(7) In addition to the placement disposition alternatives, the Tribal 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:

(a) Parenting education classes;

(b) Alcohol or substance abuse treatment;

(c) Counseling for victims or perpetrators of domestic violence; or

(d) Any other services that the court determines may be useful in aiding family reunification.

#### D. Continuance and Scheduling.

(1) The Tribal Court may continue the Placement and Services Hearing, on its own motion or on the motion of any interested party, for a seven (7) day 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.

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

#### E. Failure to Appear.

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

may also issue a come to court warrant, and hold the hearing when the parent, guardian, or custodian comes to court.

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

(3) If the parent, guardian, or custodian is found in default, the court shall specify the facts, grounds and Children's Code sections upon which it relied to make such finding.

## **SECTION 20. STATUS REVIEW HEARINGS**

A. Timing. The status of all children shall be reviewed by the Tribal Court at least every thirty (30) days at a hearing to determine whether court supervision shall continue.

B. Purpose and Findings.

(1) A child shall be returned home at the Status Review Hearing unless the Tribal Court finds that a reason for removal as set forth above in this Children's Code still exists. The Tribal Court may, however, due to unresolved problems in the home, continue court intervention, services and supervision as appropriate.

(2) If appropriate, the Tribal Court may refer the matter to a diversion program or family team decision making.

(3) The purpose of the Status Review Hearing is for the Tribal Court to:

(a) review the placement and plan for assuring that the child receives safe and proper care;

(b) determine the continuing need for and appropriateness of the placement;

(c) determine the extent of compliance with the case plan;

(d) determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement;

(e) project a likely date by which the child may be returned and safely maintained at home or placed for adoption or placed in another permanent living arrangement;

(f) 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; and

(g) in the case of a child who has attained age sixteen (16), determine the services needed to assist the child to make the transition from foster care to independent living.



(4) The Tribal Court, at any Status Review Hearing, held no sooner than twelve (12) months and no later than eighteen (18) months from issuance of the Placement and Services orders, must order a permanent plan, which may include an order that a petition for guardianship, or, only in extreme circumstances, a petition for modification of the parent/child relationship be filed.

## **SECTION 21. PERMANENCY HEARINGS**

A. Timing. A Permanency Hearing must be held no later than twelve (12) months from the date the child enters foster care.

B. Findings.

(1) The Tribal Court must make a finding that the Tribal Children and Human Services has made reasonable efforts to finalize a permanency plan for the child. The permanency plan may be to continue reunification services 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 twelve (12) months thereafter.

(2) The Tribal Court must also make a finding that reasonable efforts have been made to prevent the child's removal from home. The Court may find that a lack of efforts is reasonable, such as when there is no safe way to make efforts to prevent removal.

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

(4) The Court may waive reasonable efforts to reunify if it finds aggravated circumstances, such as conviction of certain felonies involving crimes against children. If reasonable efforts are waived, a separate reasonable efforts finding is not required.

C. Reunification. The Court may order reunification as the permanent plan if the parents have been diligently working toward reunification, and reunification is expected in a time frame consistent with the child's developmental needs.

## **SECTION 22. SUSPENSION OF PARENTAL RIGHTS**

A. Purpose.

As a general rule, it is against the Tribe's policy and philosophy to terminate parental rights for the Tribe's children. This section shall be construed in a manner consistent with the philosophy that all parties shall be secured their rights as assured by the Tribe's Constitution; that the family unit is of most value to the tribal community and individual family members when that unit remains intact; and that the parent-child relationship is of such vital importance that modification of parental rights should be used only as a last resort when, all efforts have failed to avoid modification and it is in the best interests of the child and tribe concerned to proceed under this section.

The purpose of this section is to provide for the voluntary and involuntary modification of the parent-child relationship and for the substitution of parental care and supervision by judicial process, for those extremely rare circumstances where it is in the child's and the Tribe's best interests to modify parental relationships.

B. Grounds For Involuntary Suspension. The Tribal Court may modify parental rights to a child without the parent's consent only if, by proof beyond a reasonable doubt, it finds that modifying parental rights is in the best interest of the child and the child has been subject of a case involving abuse, neglect, or abandonment as defined in this code for at least one year.

C. Pre-Filing Requirements. A petitioner seeking involuntary modification of the parent-child relationship must establish the following:

(1) The child has been an abused, neglected, or abandoned child under this Code for at least a one-year period of time, and has been removed from his or her parent at the time of this modification hearing for a maximum period of fifteen (15) of the previous twenty-two (22) months, unless a compelling reason not to file a termination or modification petition exists;

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

(3) The social service agency involved attempted 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);

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

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

(6) Not returning the child to his or her parent is the least detrimental alternative that can be taken.

D. Who May File Suspension Petition.

A petition may be filed by:

(1) Either parent when modification is sought with respect to the other parent;

(2) An authorized Tribal representative;

(3) A parent may file a petition for the voluntary modification of his or her parental rights.

No parental rights may be modified unless a petition has first been filed, notice has been given, and a hearing held in accordance with the provisions of this section.

E. Contents of the Suspension Petition. The petition for suspension of parental rights shall include the following to the best information and belief of the petitioner. The report may be entered into evidence if the person who wrote the report is available to testify:

- (1) The name, place of residence and tribal affiliation of the petitioner (if other than an authorized Tribal representative);
- (2) The full name, gender, date and place of birth, residence and tribal affiliation of the child;
- (3) The basis for the Tribal Court's jurisdiction;
- (4) State the relationship of the petitioner to the child, or the fact that no relationship exists;
- (5) The names, addresses, tribal affiliation, and dates of birth of the child's parents;
- (6) 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;
- (7) The name and address of the person or agency having legal or temporary custody of the child;
- (8) The grounds on which the modification is sought under this Children's Code (unless voluntary modification);
- (9) A statement that the pre-filing requirements set forth in this Children's Code have been met (unless involuntary modification); and
- (10) A list of the assets of the child together with a statement of the value thereof. When any of the facts required by this section are unknown, the petition shall so state.
- (11) The petitioner shall sign and date the petition.

F. Notice. After a petition for the involuntary suspension of parental rights has been filed, the Tribal Court will set the time and place for hearing and send notice to the petitioner, the parents of the child, any guardian of the child, the person having current legal or temporary custody of the child, and the child's extended family as determined by the court. If the child's parent(s) 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.

G. 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 consecutive weeks. All notices served whether personally or by registered mail shall be received by the person named therein no less than ten days prior to the date set for the hearing. No hearing can be held sooner than ten 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.

H. Pre-Suspension Report.

(1) Upon the filing of a petition under this section for the involuntary modification of parental rights, the Tribal Court shall order that the tribal child welfare agency 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 purpose of the report is to aid the Tribal Court in making a determination on the petition. The Tribal Court may request additional reports where it deems necessary.

(2) The report shall include the circumstances of the petition, the investigation, the present condition of the child and parents, proposed plans for the child, and other such facts as may be pertinent to the parent and child relationship. The report shall include a recommendation and the reasons the parent and child relationship should be modified.

I. Voluntary Suspension Of Parental Rights. Parental rights may be relinquished (voluntarily suspended) by a parent in writing, if signed by the parent in the presence of the judge 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 shall ensure that the parent understands the consequences of the voluntary modification prior to approving it. A parent who wishes to relinquish his parental rights shall be provided an interpreter if he or she does not understand English.

J. Findings of Facts And Conclusions of Law Order.

(1) 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.

(2) If the suspension petition is brought by the Tribe, the order must include the finding that the petitioner proved the elements of suspension of parental rights beyond a reasonable doubt:

(a) The child has been an abused, neglected, or abandoned child under this Code for at least a one-year period of time, and has been removed from his or her parent at the time of this modification hearing for a maximum period of fifteen (15) of the previous twenty-two (22) months;

- (b) The court has entered an order which states what the parent was required to accomplish to correct his or her underlying problem(s);
- (c) The social service agency involved attempted 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 parents 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.

(3) If the petition for suspension is brought by a child's parent, the order must include the finding that the petitioner proved the following elements of suspension beyond a reasonable doubt:

- (a) The child has been an abused, neglected, or abandoned child under this Code for at least a one-year period of time, and has been removed from his or her parent at the time of this modification hearing for a maximum period of fifteen (15) of the previous twenty-two (22) months;
- (b) There is little likelihood the conditions will be remedied so that the child can be returned to the parents in the near future;
- (c) Continuation of the current parent-child relationship clearly diminishes the child's prospects for successful placement into a permanent and stable home; and
- (d) Not returning the child to his or her parent is the least detrimental alternative that can be taken.

K. Result of Suspension Order. Upon the suspension of parental rights, all rights, powers, privileges, immunities, duties and obligations including any rights to custody, control, visitation, or support existing between the child and parent shall no longer exist, unless otherwise modified as directed by the Tribal Court. Any support obligation existing prior to the effective date of the order modifying parental rights shall not be severed or modified. Modification of the rights of one parent shall not affect the rights of the other parent. A modification order shall be considered as a factor in whether or not the child inherits property or other interests from the parent whose rights were modified. A parent whose rights were modified shall not, however, inherit from such child after modification.

L. Child'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's Code be deemed to affect any rights and benefits that the child derives from then child's descent from a member of a federally recognized Indian tribe.

M. Custody After Suspension Order. If upon entering an order modifying the parental rights of a parent there remains no parent having parental rights, the Tribal Court shall commit the child to the custody of a social services agency for the purpose of placing the child for customary adoption or guardianship, or take other suitable measures for the care and welfare of the child.

N. 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 will continue until the child is adopted or permanently placed.

### **SECTION 23. TERMINATION OF PARENTAL RIGHTS**

A. Purpose. It is currently the custom of the Tribe to view involuntary termination of a parent's rights as a last resort and a process to be used only when an adoption has been arranged in a step-parent adoption, or when one of the parents has committed a heinous act against another person. This chapter addresses both involuntary termination of a parent's rights and termination of parental rights by consent of the parent in the course of an adoption.

B. Petition – Who may File. Any person at least eighteen (18) years old may file a petition to ask the Tribal Court to voluntarily terminate their parental rights. Only a representative of the Tribe or a petitioner with the Tribe's approval may file a petition for involuntary termination of a parent's rights.

C. Petition – Contents. A petition for termination of a parent's rights shall include:

(1) The name, birth date, residence, and Tribal status of the child who is the subject of the petition;

(2) The name, birth date, residence, and Tribal status, if known, of the child's parent(s), guardian(s), or custodian(s);

(3) If the child is residing with someone other than a parent, the location and length of time at that location; and

(4) A statement by the petitioner of the facts and reasons supporting the request.

D. Notice of Hearing on Petition. Upon the filing of a petition, the Court shall schedule a hearing to be held within 30 days. The petition and notice shall be served no later than 10 days before the hearing on the parents, the guardian or current placement, who is required to join in the petition and Tribal Children and Human Services so they can prepare a report, and anyone who may have an interest in the proceedings or be of assistance to the Court in adjudicating the petition.

E. Pre-termination report – Preparation. The petitioner shall have a pre-termination report prepared by Tribal Children and Human Services or other tribally approved agency who shall consult with all health, education, and social service personnel who have had prior professional contacts with the child and any criminal justice agencies who may have had contact with the parent(s); and with the petitioner(s) to determine whether termination of the parent’s rights would be in the best interest of the child. In addition, the report preparer shall investigate the biological parents’ family health history either through direct consultation with the parent or other family member to provide the adoptive family with health information. The report shall be in writing and contain the professional opinions of all persons consulted. The pre-termination report for a parent who is asking the court to allow them to voluntarily terminate their parental rights shall include the requirements listed in Subsection I, Consent.

F. Pre-termination Report and Additional reports – Service. Whoever prepares the report shall file and serve the pre-termination report with the Court at least ten (10) calendar days before the hearing. Any party may file with the Court a report which shall include his or her recommendations regarding the proceeding. The party shall provide copies of the report to all other parties prior to the hearing.

G. Termination Hearing – Conduct. The hearing shall be private and closed. Only those persons the Tribal Court finds to have a legitimate interest in the proceedings may attend. The Tribal Court shall consider all reports submitted for review. All parties shall be given the opportunity to testify and to contest the factual contents and conclusions of the pre-termination report(s).

H. Grounds for Termination and Burden of Proof. The Tribal Court may order termination of a parent’s rights only when an appropriate adoptive home is available and adoption proceedings have been filed in conjunction with the termination proceedings. In addition, the Tribal Court must first approve the parent’s consent as provided in this chapter or in cases of involuntary termination the petitioner must prove by beyond a reasonable doubt evidence each of the following:

(1) The parent:

(a) Subjected the child to aggravated circumstances including but not limited to abandonment, torture, chronic abuse, severe neglect or sexual abuse or exploitation; or

(b) Committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate murder or manslaughter of a child or the sibling or parent of the child; or

(c) Committed aggravated assault against a child; or

(d) Committed an heinous crime against another person; or

(e) Committed neglect of a child that resulted in serious bodily injury or death; and

(2) That termination of the parent's rights and adoption are in the best interest of the child and of the Tribal community; and

(3) That the Tribe has offered or helped arrange for appropriate resources to help the parent care appropriately for the child; and

(4) That it is unlikely that the parent will be able to care appropriately for the child.

I. Consent to Termination of Parental Rights. Consent of a parent to terminate his or her rights to a child is not valid unless:

(1) The parent is at least eighteen (18) years old;

(2) The parent has received counseling from an appropriate professional who has explained the consequences of terminating his or her rights, has explored all available services to help the parent care for the child (such as parenting classes and substance abuse treatment), and has explored alternatives to termination and adoption, such as guardianship;

(3) The parent orally explains his or her understanding of the meaning of termination of parental rights to the judge and the judge certifies that the terms and consequences of the consent were fully explained and were fully understood by the parent; and

(4) The consent was given no sooner than ten (10) days after the birth of the child. Any consent may be withdrawn prior to the entry of a final decree of adoption and, if no other grounds exist for keeping the child from the parent, the child shall be returned to the parent.

## **SECTION 24. GUARDIANSHIPS**

A. Purpose. This section deals with long-term out-of-home placement options for a child that is either involved in a youth-in-need-of-care case or a private cause of action. There are three long-term options: legal guardianship after a youth-in-need-of-care case, a private legal guardianship, or a customary adoption addressed in Section 25. In all cases, under the section, the best interests of the child shall guide the Tribal Court's decision.

B. Legal Guardianship. For all guardianship cases, a guardianship should provide permanence, a stable home, and a responsible and emotionally supportive caregiver to the child without terminating a parent's rights. This section applies to both adjudicated youth-in-need-of-care and private guardianships. An adjudicated youth-in-need-of-care guardianship may impose additional requirements or consideration and will be specified. A private guardianship cannot be considered if the child is a court-adjudicated youth-in-need-of-care.



(1) For child-in-need-of-protection, there is a presumption that guardianship is in the child's best interest if the following has occurred:

- (a) The child has been adjudicated a child-in-need-of-protection;
- (b) The parent was given the requisite time period to reunify with the child;
- (c) The permanent plan for the child was changed from reunification to a permanent plan of guardianship.

(2) Tribal Children and Human Services shall create a guardianship division and create rules and procedures for reviewing guardianship cases no less than semiannually for a period of three years. If any concerns are noted by the guardianship review team the review period may be extended past three years.

(3) Tribal Children and Human Services shall have the ability to file motions in guardianship cases to request judicial review of a case to address any concerns that may arise. The Tribal Court may order the guardian(s) to participate and comply with services to alleviate such concerns.

C. Who May File a Petition for Guardianship and Standing. Any person petitioning for legal guardianship must be an adult and establish:

- (1) He or she is a relative or family member, or has established a significant familial relationship as defined within this code; and
- (2) The petitioner has current custody or placement of the child by a court order or by agreement of the parent(s). Implicit agreement by the parent(s) is presumed if the child has been with the petitioner for three or more years or a majority of the child's life.

D. Contents of the Petition. A petition for guardianship shall be verified under oath by the petitioner(s) and shall contain the following information:

- (1) The full name, residence, date and place of birth and sex of the child, with attached birth certificate for the child;
- (2) The names of the persons with whom the child has lived, the residences at which the child has lived, for the previous year, and the length of time the child has lived with each person and at each residence;
- (3) The names and residences of the child's legal parents, guardians, or custodians. In addition, the names and residences of putative fathers, if any;
- (4) Documentary proof of the child's membership status in the Tribe;
- (5) The full name, residence, date and place of birth, occupation of the petitioner(s), statement of relationship to the child, and proof of petitioner's Tribal membership, if

applicable. The petitioner can request that the address be confidential and use Tribal Children and Human Services address consistent with current policies;

(6) A statement by petitioner(s) of the desire that a relationship of legal guardian and child be established between petitioner(s) and the child;

(7) If the petitioner is not a member of the child's family or the Tribe, a plan to maintain ties with the Tribe and where appropriate with extended family members; and

(8) A citation to the specific section of this chapter giving the Tribal Court jurisdiction of the proceedings.

E. Summons and Notice of Hearing. The Court Clerk shall set a preliminary hearing within thirty (30) days and issue summons and notice of the preliminary hearing upon filing the petition. Notice shall include:

(1) The date, time, and place of the hearing and a copy of the petition for guardianship; and

(2) A statement to the effect that the rights of the parent(s) may be affected, that certain persons are proposed to be appointed as guardian(s) in the proceedings, and that if the parent(s) fail to appear at the time and place specified in the summons, the Tribal Court may appoint those persons as guardian(s) and take any other action that is authorized by law.

(3) Guardianship petitioners shall be responsible to have the petition, summons and notice of hearing for guardianship personally served on:

(a) The child's parent(s);

(b) The child who is the subject of the petition for guardianship if he or she is fourteen (14) years of age or older;

(c) Tribal Children and Human Services; and

(d) Any person the parties or the Tribal Court deems necessary for proper adjudication.

(4) If any party who is required to be personally served is not within the exterior boundaries of the Reservation, service shall be by certified mail, return receipt requested, or by any other means reasonably designed to give summons and notice.

(5) If any party's current address is unknown, the petition shall be published in a regularly published newspaper of the last known area the party resided in.

F. Guardianship Hearings.

(1) At the preliminary guardianship hearing the following will occur:

(a) Determination of standing of petitioner.

(b) Order that Tribal Children and Human Services prepare a guardianship report. Tribal Children and Human Services shall investigate any party to be appointed as a guardian, conduct a complete home study, and shall prepare and submit a written report to the Tribal Court no later than ten (10) calendar days before the guardianship hearing.

(i) The report shall contain Tribal Children and Human Services recommendation regarding the guardianship, and whether the department believes that such guardianship will be in the best interests of the child consistent with established policies.

(ii) A copy of the report shall be served on the petitioner(s).

(c) Set provisions as necessary for temporary custody pending the guardianship hearing.

(2) When the child who is the subject of the petition for guardianship is twelve (12) years of age or older, the Court shall consider his or her preference in appointing a guardian.

(3) Petitioner(s) and Tribal Children and Human Services shall appear personally at the hearing if the petition involves a child-in-need-of-protection child.

(4) The Court shall inquire of the parties appearing as to whether the best interests of the child will be promoted by the guardianship. At the conclusion of the guardianship hearing, the Court shall make written findings as to whether, by a preponderance of evidence, the guardianship is in the best interests of the child.

(5) An order establishing guardianship shall be considered a final order for the purposes of appeal.

#### G. Terms and Rights of Guardian.

(1) A guardian appointed by the Tribal Court shall have the custody of, and be responsible for the care of the child and the following additional duties:

(a) Safeguarding the care and management of his/her property from the date of the guardianship's establishment until the child reaches the age of 18, marries, is emancipated by the Tribal Court, or until the guardian is legally discharged; provided, that the guardian shall not have the authority, without express consent of the Tribal Court, to dispose of any real property or Tribal member benefits of the child in any manner.

(b) The guardian shall also have the authority to consent to the medical care and treatment of the child, and to otherwise have those rights of a parent of the child.

(c) If the guardian is not a member of the child's family or the Tribe, then a cultural and family plan will be required and incorporated as an attachment to the court order.

(d) The Tribal Court may order a guardian to let the parents visit or contact the child, but the Court may also put limits or other conditions on the visitation, such as requiring that any visitation be supervised. The time and frequency of parental visitation is often up to the guardian (or the Court) to decide. Parents may, in some cases, regain custody of their child in the future if the Tribal Court determines the guardianship is no longer in their child's best interests.

## H. Termination of Guardianship.

### (1) Termination of the Guardianship Order.

(a) A guardian may motion the Tribal Court for relinquishment of guardianship of a child. The Tribal Court shall set a hearing on motion within two weeks and issue a summons. The guardian must serve the parent(s) and Tribal Children and Human Services with the motion to relinquish and summons for the hearing. The Tribal Court will determine whether good cause exists and if relinquishment is in the best interest of the child.

(b) In a child-in-need-of-protection, a parent who has complied with the services required from the adjudicatory and case plan or otherwise can demonstrate a substantial change of circumstances, may move for dismissal of the guardianship. In all other cases there must be shown a substantial change of circumstances as a preliminary matter.

(i) The parent must provide documentation of completed services and requirements. The Tribal Court will review these documents and the underlying dependency in chambers to determine if there is prima facie evidence to substantiate the setting of a hearing. If the evidence is sufficient, then a hearing shall be set and the guardian shall be served with the court date, motion and supporting evidence. If the child was placed out of the home as a result of a drug or alcohol issue, then the parent must demonstrate one year of documented sobriety of clean urinalysis results or treatment records before return home will be considered.

(ii) The presumption at this hearing is that the child should remain with his or her guardian if the child has been in the guardian's care for over three years or a majority of the child's life based on their developmental, emotional and physical needs.

(iii) To overcome this presumption the parent must show by clear and convincing evidence that termination of the guardianship is in the child's best interest. Any costs associated with a parent obtaining documentary proof, such as evaluations or professional recommendations, that termination of the guardianship is in the child's best interest shall be borne by the parent.

### (2) Upon Relinquishment or Dismissal.

(a) If the child has previously been adjudicated as a child in need of protection, the child's permanent plan order will remain in effect, including all required services previously ordered of the parents.

(i) Tribal Children and Human Services shall be responsible for placing the child and reviewing the permanent plan order.

(ii) A permanent plan review hearing will be held within 30 days of the dismissed guardianship. A Tribal Children and Human Services report to court for a permanent plan review shall be filed 10 days prior to the hearing.

(b) For a non-youth-in-need-of-care guardianship, the Tribal Court shall set subsequent hearings, with the first to be held within 14 days to establish a hearing schedule for the child. The Tribal Court shall notify Tribal Children and Human Services if there is no parent or other guardian willing or able to care for the child prior to the relinquishment or dismissal of the guardianship.

I. Continuing Court Jurisdiction. After guardianship is granted, the Tribal Court retains jurisdiction until the child turns eighteen (18) or is adopted but no further Tribal Court review is required unless there is a change of circumstances or a request for Tribal Court review is made by Tribal Children and Human Services guardianship team.

J. Visits with Children in Guardianship. Relatives or anyone who has a significant familial or maintained an ongoing relationship with the child may request visitation. The Tribal Court will evaluate the request and create a plan for visits or other contact or to deny visits or other contact. The evaluation for visits or denial of visits could include an assessment of the relationship, an FTDM and/or mediation among parties to discuss common permanence goals for the child and other related issues. If a voluntary visitation plan cannot be created or implemented then the relatives and/or persons who have maintained an ongoing relationship may file a motion with the Tribal Court to request the Tribal Court impose a plan.

## **SECTION 25. ADOPTIONS**

A. Customary Adoptions. Adoptions under this Code shall be in the nature of "Open Adoptions." The purpose of such open adoptions is to not permanently deprive the child of connections to, or knowledge of, the child's biological family. The purpose of adoptions shall be to give the adoptive child a permanent home. To this end, the following shall apply and be contained in all adoptive orders and decrees:

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

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

(3) The adoptive child and members of the child's natural extended family (including parents) shall have a right of reasonable visitation with each other, subject to reasonable controls of the adoptive parents;

(4) Adoption shall not serve to prevent an adopted child from inheriting from a natural 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.

**B. Who May File a Petition for Adoption.** The petition shall be initiated by the person proposing to adopt, or by Tribal Children and Human Services in the case of a child-in-need-of-protection. 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 of the spouses is the natural or adopted parent of the proposed adoptee, said parents shall not be required to join in the petition.

**C. Contents of Petition.** The petition for adoption shall include the following, to the best information and belief of the petitioner:

(1) The full name, address, and tribal affiliation of the petitioner;

(2) The full name, the gender, residence, date and place of birth, and tribal affiliation of the proposed adoptee;

(3) The name by which the proposed adoptee shall be known if the petition is granted;

(4) The basis for the court's jurisdiction, including evidence of the suspension or termination of both biological parent's rights;

(5) If the proposed adoptee is a child, a full description and statement of value of all property owned, possessed or in which the child has an interest;

(6) The relationship of the petitioner to the proposed adoptee; and

(7) The names and addresses of any person or agency whose consent to aid adoption is necessary.

**D. Multiple Adoptees.** Where there is more than one proposed adoptee, and these proposed adoptees are siblings, only one 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.

**E. Notice.** Notice shall be provided to Tribal Children and Human Services.

F. 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 Tribal Children and Families Department or other qualified agency conduct 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.

G. 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 document. The court may order additional home studies or reports as it deems necessary.

H. Withdrawal of Consent. Any consent given under the provisions of this 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. 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.

I. 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 which 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.

J. Adoption Preferences. The preference of placement in adoption shall be in the following order unless the court determines that the child's best interests require deviation from the preferences:

- (1) A member of the child's extended family, according to tribal laws, customs and traditions.
- (2) Another member of the child's Tribe.
- (3) Another Indian family.
- (4) Another family, provided the adoptive parents agree to maintain a meaningful and consistent cultural connection between the child(ren) and the Tribe.

K. Hearing Procedures.

- (1) The hearing on customary adoption shall be ceremonial and shall be private and closed. Only Tribal Children and Human Services, the petitioner(s), anyone there on behalf of the petitioner(s) and any family members invited by petitioner(s) or who have maintained an ongoing relationship with the child, including siblings, shall be permitted to attend.

(2) An adoption hearing shall be held within thirty (30) days of receipt of an adoption petition from the prospective parent(s).

(3) The burden of proving the allegations of the petition shall be upon the petitioner and the standard of proof shall be by a preponderance of evidence. 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) Suspension or termination 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; and
- (h) Order of preference of placement.

L. 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 section have been met, enter a final decree of adoption.

M. Denial. If the Tribal Court is satisfied that the adoption will not be in the child's best interest, or finds that all of the requirements of this section have not been met, it may deny the petition and make any other order it deems necessary for the care and custody of the child not inconsistent with this Code.

## **SECTION 26. APPEALS**

A. Who Can Appeal. Any party to a Tribal Court proceeding may appeal a final Tribal Court order. Orders that directly affect the parent-child relationship may be appealed.

B. Time Limit for Appeal. Any party seeking to appeal a Tribal 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.



C. 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.

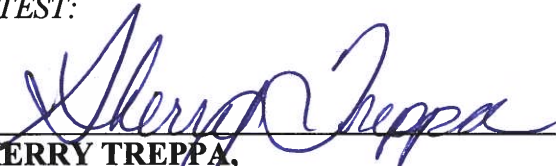
D. Stay of Proceedings Pending Appeal. A court order may be stayed by such appeal.


**CERTIFICATION**

We the undersigned Officers of the Habematolel Pomo of Upper Lake (the "Tribe"), being the Chairperson and Secretary of the Executive Council (EC) of the Tribe, do hereby certify that the Executive Council is composed of seven (7) Council Members, of which 7 were present, constituting a quorum, at a *monthly* meeting thereof, duly called, noticed and conducted on this day of October 26<sup>th</sup>, 2018 and that this Resolution was adopted by an affirmative vote of 6 YEAS, 0 NAYS, and 1 ABSTENTIONS. We further certify that since its adoption this Resolution has not been rescinded, amended, or modified in any way.

**DATED SIGNED:** November 27<sup>th</sup>, 2018

**ATTEST:**

  
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**SHERRY TREPPA,**  
Executive Council (EC) Chairperson

  
\_\_\_\_\_  
**IRIS PICTON,**  
Executive Council (EC) Secretary