

TORRES MARTINEZ DESERT

CAHUILLA INDIANS

TRIBAL CHILDREN'S CODE

Adopted Effective: October 8th, 2011

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TORRES MARTINEZ DESERT CAHUILLA INDIANS
TRIBAL CHILDREN'S CODE

Chapter One. Purpose; Policy; Jurisdiction; Definitions.

Section 1. Purpose.

The purpose of this Tribal Children's Code is to establish policies and procedures to protect the best interests of Torres Martinez children and their families, the future of the Torres Martinez Desert Cahuilla Indians ("Tribe") and its customs, traditions, and culture, and any Indian children or children and their families who are subject to, and may benefit from, this Code and its provisions. This Children's Code will protect the health, welfare, language, customs and traditions of the Tribe and its members for all future generations.

Section 2. Policy.

It will be the policy of the Tribe, including its governmental entities, agencies, departments, employees and representatives, to protect the best interests of Indian children by:

1. Taking an active role in providing for the health, welfare and safety of Indian children within its jurisdiction;
2. Preserving and strengthening family ties whenever possible, including preventing the unwarranted breakup of Indian families;
3. Maintaining the connection of Torres Martinez children to their families, Tribe, and Tribal community;
4. Promoting the stability and security of the Tribe by establishing Tribal standards for appropriately handling situations involving a "child-in-need-of-care," and other proceedings involving Torres Martinez children;
5. Preserving the opportunity for Torres Martinez children to learn about their Tribal culture and heritage and maintain or create a connection to their Tribe, enabling them to become productive adult members of the Tribal community;
6. Ensuring that all Torres Martinez children reside in an adequate home environment that will protect and promote their health, safety, welfare and development;
7. Providing child welfare services in accordance with the traditions, customs, laws and cultural values of the Tribe; and,
8. Ensuring that other tribal, federal, state, and county agencies, departments, courts and representatives cooperate fully with the Tribe in fulfilling the purposes of this Code.

Section 3. Jurisdiction.

The Tribe will have jurisdiction over all Indian child welfare matters involving the following:

1. A Torres Martinez child who resides or is domiciled on Tribal lands;
2. A Torres Martinez child who resides or is domiciled on non-Tribal lands;
3. An Indian child who resides or is domiciled on Tribal Lands, *except that* the Tribe will decline to exercise its jurisdiction over a non-member Indian child if the non-member Indian child's Tribe objects to such exercise of jurisdiction;
4. A non-Indian child who resides or is domiciled on Tribal Lands, *except that* the Tribe will decline to exercise its jurisdiction over such a non-Indian child if his or her parent, guardian, or custodian objects to such exercise of jurisdiction; and,
5. Any child whose parents, guardian, or custodian (and Tribe, if applicable) consents to the Tribe's jurisdiction.

Section 4. Definitions.

The following terms shall be liberally construed so as to facilitate the authority of the Tribe to protect the best interests of Indian children and their families. When interpreting terms not defined by this Code, the Tribal Court shall take into consideration Tribal laws, customs, and traditional child-rearing practices. Unless in conflict with applicable Tribal law, terms not specifically defined in this Code shall be defined in accordance with applicable federal law. As used in this Code, the terms listed below shall have the following meaning:

1. "Abandonment": The failure of the parent, legal guardian, or custodian to provide reasonable support for, or to maintain contact with, a child for a substantial period of time without good cause.
2. "Abuse": Any of the following, taken together or separately, may constitute abuse:
 - A) the infliction of physical, emotional, or other injury on a child, including sexual abuse or sexual exploitation;
 - B) failing to provide reasonable care or necessary services for a child, including educational, medical, dental, therapeutic or other services;
 - C) exploiting or overworking a child to such an extent that the child's health or well-being is endangered;

D) subjecting the child to, or failing to protect the child from, excessive physical discipline;

E) failing to provide a safe, nurturing, loving, and culturally appropriate environment for the child;

F) allowing a child to knowingly ride in a vehicle operated by a person whose driving abilities are impaired by alcohol or drug usage;

G) failing to protect the child from abuse;

H) failing to ensure that the child's physical, mental, emotional, spiritual, medical or any other needs are being appropriately met.

3. "Adjudication": The process by which the allegations in the Petition are found to be true, or not true, in the course of an evidentiary hearing.

4. "Administrative Review": In accordance with the requirements of the Social Security Act, including any future amendments thereto, the Tribe shall implement a case review system to review the Tribal Case Plan and the child's placement. Case reviews will be held at least once every six months.

5. "Adult": A person eighteen (18) years of age or older; or, a person emancipated by order of a court of competent jurisdiction or by legal marriage.

6. "Best Interests of the Child": The preservation of the connection, or the creation of such a connection if one does not currently exist, between an Indian child and the child's Tribal culture, family, and Tribe in a stable setting where the needs of that child may be met; where the child is secure and safe; where the child is emotionally, physically, socially, and spiritually healthy, and academically enriched; where all necessary steps are taken to ensure that the child's needs are being appropriately met.

7. "Case Plan" or "Tribal Case Plan": A written document for each child under the jurisdiction of the Tribe prepared by the Tribe's Indian Child Welfare (ICW) Department or other appropriate Tribal entity, Indian Child Welfare (ICW) representative, and the family whenever possible. The plan shall include a detailed description of the services to be provided to the family along with the duties and responsibilities of both the Tribe's ICW Department and the family. The plan will be designed to reunite the family and may contain, if appropriate, a concurrent, alternative permanent plan for the child.

8. "Case Review": A procedure for periodically reviewing the status of each child under the jurisdiction of the Tribal Court in accordance with the requirements of a Tribal Court order or applicable law.

9. "Child": A person who is less than eighteen (18) years old who has not been emancipated by order of the Tribal Court, a court of competent jurisdiction, by legal marriage, or as otherwise provided by applicable law.

10. "Child-in-Need-of-Care": A child who has been found by the Tribal Court to be abandoned, abused, or neglected, or is otherwise in need of Tribal services to ensure that all of the child's needs are being appropriately met and to prevent the break-up of the child's family.

11. "Custodian": Any person who has physical custody of a child under Tribal law or custom, under state law, or to whom temporary physical care, custody, and control has been transferred by the child's parent, guardian or custodian and who is providing food, shelter, and supervision to the child.

12. "Dependency Case": A case in which the child is alleged to be, or has been found by the Tribal Court to be, a "Child-in-Need-of-Care."

13. "Dependent Child": A child who has been found by the Court to be a "Child-in-Need-of-Care."

14. "Direct Descendent of a Tribe": A person under the age of eighteen (18) that has a parent who is a member of, or eligible for membership in, an Indian Tribe.

15. "Disposition": The determination by the Court of a plan for the child which addresses legal custody, physical custody, placement, and reunification or family preservation services to the child, parents, and family.

16. "Domicile": A person's legal home or main residence in which the person resides or to which the person intends to return. The domicile of a child is generally that of the custodial parent, legal guardian, or other custodian or caretaker.

17. "Extended Family": A person's parents, children, grandparents, great-grandparents, aunts, uncles, great-aunts, great-uncles, cousins, sisters, brothers, including extended family members created by marriage or recognized by Tribal traditions and customs, or any person who can establish a significant familial-type relationship to the child, or as otherwise defined by the Tribe.

18. "Family Preservation Services": Services provided to a family to prevent the removal of a child, to stabilize a family, or to reunite a family.

19. "Foster Care": Substitute care for a child who has been voluntarily or involuntarily removed from his or her home.

20. "Guardian Ad Litem": A person appointed by the Tribal Court to represent the best interests of a child found to be in need of care, or appointed by a court of competent jurisdiction

to represent a child for the protection of the best interests of the child.

21. **"Indian"**: Any member of, or person eligible for membership in, a federally recognized Indian Tribe, band or community, or an Alaska Native, or any person who is considered to be an Indian according to the traditions and customs of his or her Tribe.
22. **"Indian Child"**: A person under the age of eighteen (18) years of age who is a member of, or eligible for membership in, a federally recognized Indian Tribe, band or community, or is an Alaska Native, or any child who is considered to be an Indian according to the traditions and customs of his or her Tribe.
23. **"Indian Child Welfare" ("ICW") Department**: The Tribe's Indian Child Welfare Department, including any other Tribal department, entity, or agency charged with protecting Indian children and serving their families.
24. **"Indian lands or Tribal lands"**: All lands within the exterior boundaries of the Torres Martinez Desert Cahuilla Indians Reservation and all lands held in trust by the United States of America for the Tribe.
25. **"ICW Representative or Delegate"**: A person employed or appointed by the Tribe to represent the interests of Torres Martinez children and the Tribe.
26. **"Intervenor"**: A person, not the child or parent in a case, who has been allowed by the Tribal Court to intervene in a dependency proceeding and has been granted certain rights in that proceeding.
27. **"Legal Guardian"**: A person appointed by the Tribal Court or another court of competent jurisdiction to care for the child's person, including the child's property if necessary and appropriate.
28. **"Neglect"**: The failure of the parent, guardian, custodian or other caretaker to provide adequate food, clothing, shelter, medical care, education, or supervision for the child's health, safety, and well-being, including the failure to take advantage of reasonably available public assistance and service programs designed to meet such needs when the parent, guardian, custodian or caretaker cannot meet those needs without assistance.
29. **"Non-Indian Child"**: A person under the age of eighteen (18) years who is not a member of, eligible for membership in, or a direct descendent of a member of a federally recognized Indian tribe, band, community, or Alaska native, or considered to be an Indian in accordance with a Tribe's customs and traditions.
30. **"Non-Member Indian Child"**: A person under the age eighteen (18) years that is a member of, eligible for membership in, or a direct descendent of a member of a federally recognized Indian tribe, band, community, or Alaska native other than the Torres Martinez Desert Cahuilla Indians.

31. "Parent": A person who is the natural, adoptive or legal parent of a child, *except for* persons whose parental rights to the child have been terminated by a court of competent jurisdiction. An unwed father whose paternity has been legally acknowledged or who is otherwise established as a legal father shall be considered a parent.

32. "Peacemaker Panel" or "Traditional Dispute Resolution": The non-adversarial approach developed and used by the Tribe to resolve conflicts involving Indian children and their families, or children and families subject to the Tribe's jurisdiction.

33. "Presumed Parent": A married man cohabiting with his wife, the mother, is presumed to be the legal father of a child conceived during the marriage, absent DNA or other conclusive evidence to the contrary. Unless DNA testing, physical evidence or legal documents establish otherwise, children born to a married couple are presumed to be the biological children of the husband. A married man not cohabiting with his wife, the mother, is presumed to be the legal father of a child conceived during the marriage; however, that presumption may be rebutted.

34. "Parental Care": Care provided by a parent, guardian, or custodian to a child, including the responsibility to appropriately supervise, control, care for, discipline, and provide the necessities of life.

35. "Party": The parent, guardian, custodian, child, or Tribe, including authorized Tribal representatives, to whom certain rights accrue, including: the right to be notified of proceedings; to retain counsel or, in some cases, to secure Court-appointed counsel or Court-approved spokesperson; to appear and present evidence; to call, examine, and cross-examine witnesses; the unlimited or restricted right to discovery and the inspection of the records; and to request a hearing or appeal a final order.

36. "Relative": Any person who is the child's parent, step-parent, grandparent, aunt or uncle, brother or sister, step-brother or step-sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or anyone deemed by the ICW Department, the child's Tribe, or the Tribal Court to have established a significant familial-type relationship with the child.

37. "Shelter Care": A placement in foster care or other out-of-home care, including a home or other facility used as a short-term placement for a child pending return to the child's family.

38. "Significant Familial-Type Relationship": An ongoing personal relationship with the minor child that began at least (12) twelve months before the filing of the motion to intervene, or since the birth of the child if the child is less than (12) twelve months old, and has continued to the filing date, and in which the moving party has:

A) had physical custody of the child or has resided in the same household as the child;

B) supplied, or otherwise made available to the child, food, clothing, shelter and incidental necessities and provided the child with necessary care, education and discipline; and,

C) helped fulfill the child's needs through interaction and companionship.

39. "Spokesperson": A person approved by the Tribal Court to speak on behalf of a parent, guardian, custodian, caretaker, child or other interested party.

40. "TANF" or "Tribal TANF": The Tribe's Temporary Assistance for Needy Families Department, including its employees, agents, or authorized representatives.

41. "Torres Martinez or Tribal Member Child": Any child who is a member of, is eligible for membership in, is a direct descendant of a member of, or is otherwise considered to be a tribal member according to the traditions and customs of the Torres Martinez Desert Cahuilla Indians.

42. "Tribe": The Torres Martinez Desert Cahuilla Indians, including its departments, agencies, employees and authorized representatives.

Chapter Two. Duty to Investigate and Report; Confidentiality; Medical Examinations.

Section 1. Duty to Investigate and Report.

1. Basis of Investigation and Report: The Tribe shall immediately investigate all allegations of child abuse, neglect, and abandonment and shall proceed according to this Code.

2. Reports: Persons who have reasonable cause to suspect that a child has been abused, neglected, or abandoned shall report the matter to the Tribe's ICW Program, Tribal law enforcement, or other appropriate Tribal agency responsible for investigating allegations of abuse or neglect.

3. Persons Required to Report: Persons required to report suspected abuse or neglect include any physician, physician's assistant, psychologist, psychiatrist, mental health counselor, nurse, nurse's aide, nurse practitioner, midwife, dentist, dental assistant, hygienist, optometrist, or any medical or mental health professional; school principal, school teacher, or other school official; social worker; child day care center worker or other child care staff; Tribal ICW employees or authorized representatives; Tribal TANF employees or authorized representatives; foster parents, including residential care or institutional personnel; peace officer or other law enforcement official; judge, attorney, court counselor, clerk of the Court, or other judicial system official. The Tribal Court may issue sanctions against individuals who are required, but fail to, report abuse, neglect or abandonment in accordance with this Code.

4. Other Persons Reporting: Any person may make a report of suspected child abuse or neglect to the Tribe's ICW Department, Tribal law enforcement, or other appropriate Tribal entity.

5. Anonymity: Unless otherwise required by applicable law, persons reporting alleged incidents of child abuse, neglect or abandonment will remain anonymous, *except* where the Tribal Court determines that justice will be compromised by such anonymity.

6. Immunity from Liability: All persons or agencies reporting in good faith known or suspected instances of child abuse or neglect shall not be subject to civil liability or criminal prosecution in Tribal Court.

Section 2. Confidentiality.

1. Confidentiality: All proceedings under this Code shall be confidential. No employee, agent or representative of the Tribe or the Tribal Court shall provide any information regarding a case involving a child unless the release is authorized by applicable law, order of the Tribal court or a court of competent jurisdiction, or a release of information signed by the parent, guardian, custodian, or child, as appropriate.

2. Confidentiality of Tribal Court records: All Tribal Court records, files, documents and other related information associated with a child in need of care proceeding are confidential, *except that* such records may be released, if appropriate, as follows:

A) To a law enforcement agency for the purpose of a separate, subsequent investigation of child abuse;

B) To the attorney of record for the child for use in a dependency proceeding involving the child;

C) To the child, the child's parent, legal guardian, or custodian, or to an attorney of record, for use in a dependency proceeding involving the child;

D) To the Tribe's ICW Department, an authorized Tribal representative, or Tribal legal counsel, for use in a dependency proceeding involving the child;

E) To a physician, psychologist, therapist, counselor, or other professional for the purpose of providing an examination, care or treatment of a child in a dependency proceeding;

F) To Tribal Court personnel;

G) To a foster care provider with care and custody of the child for use in a dependency proceeding involving the child; or

H) By Order of the Tribal Court based upon a showing of good cause.

3. Contempt of Court: No Court records or other confidential information shall be viewed or disseminated except as provided herein. Any person who receives or views documents or other confidential information pursuant to this provision shall maintain the confidentiality of such information. Failure to abide by this Code shall constitute contempt of Court and may be punishable by a fine not to exceed \$500.

Section 3. *Medical Examinations.*

1. The Tribal Court may order a medical, dental, psychological, psychiatric, or other professional examination of a child, or any other party or person before the Court, where the Court determines that the party's or person's medical, dental, psychological, psychiatric or other health issues are relevant to the proceedings before the Court.

2. The Court shall order that such examination shall be paid for by the parties. If it is documented that the parties cannot afford to pay for such examination, the Court may request that the Tribe, or another entity, pay for the necessary examination *provided that* the Tribe consents and funds are available. The Tribe shall not be required to pay for any examination, evaluation or screening unless the Tribe consents and funding is available. Where possible, the Court shall order the person or party to obtain such examination at a Riverside San Bernardino County Indian Health Inc. ("RSBCIHF") Clinic, another Indian Health Clinic, or an organization that provides services to Indians.

Chapter Three. *Petitions; Hearings; Traditional Dispute Resolution.*

Section 1. *Grounds for Establishing a "Child is in Need of Care".*

A child is "in need of care" if:

1. The child is being, or has been, abused, neglected or abandoned by his or her parent(s), guardian, custodian, or caretaker; or,

2. The child's parent(s), guardian, custodian or caretaker fails to protect him or her from abuse, neglect or abandonment; or,

3. The child's parent(s), guardian, custodian or caretaker refuses to or is unable to discharge their parental responsibilities; or,

4. The child is deprived of any care necessary in order to appropriately provide for his or her health, welfare, safety, and well-being, including the provision of appropriate subsistence, medical care, education, and shelter.

Section 2. Investigations; Removal.**A. Investigations**

All reports of a child in need of care will be investigated by the Tribe's ICW department, or other appropriate Tribal department, agency or authorized representative, within forty-eight (48) hours of receiving a report that a child is in need of care.

B. Authority to Remove and Place in Temporary Custody

If the Tribe determines that the child is in need of care and may not be safely maintained in his or her home after an investigation, the Tribe shall document this finding in writing. The Tribe may, with the assistance of Tribal Law Enforcement or another designated Tribal representative if necessary, remove the child from the home in which the child is residing and place the child in an appropriate placement.

C. Placement Preferences

The following placement preferences, in this order, shall be applied where a child in need of care is being placed outside of his or her home, *except that* the Tribe may alter this placement preference order by Tribal Resolution:

1. A relative;
2. An extended family member;
3. A tribal member family;
4. A tribally approved home;
5. A licensed Indian foster home on or near the child's reservation;
6. A licensed Indian foster home;
7. A licensed foster home; or,
8. A licensed facility (i.e. a facility operated by a licensed child welfare service agency).

D. Immediate and Emergency Removal Notice

The Tribe shall make all reasonable efforts to immediately notify, through the most efficient means available, the parents, guardian or custodian that the child has been removed from the home or otherwise detained.

Section 3. *Initiation of a Child Protection Case.***A. *Filing a Child-in-Need-of-Care Petition***

1. *Child Removed.* A Child-in-Need-of-Care Petition will be filed with the Tribal Court by the Tribe within forty eight (48) hours after a child has been removed from his or her home.

2. *Child Not Removed.* A Child-in-Need-of-Care Petition will be filed by the Tribe within seventy two (72) hours of completion of an investigation where the Tribe determines that there is probable cause to believe that a child is in need of care but has not removed the child from his or her home.

B. *Contents of Child-in-Need-of-Care Petition*

The Petition shall provide the following information:

1. The name, address and age of the child;
2. The names and addresses of the child's parents, guardian, custodian or caretaker;
3. The specific grounds upon which the Petition is based;
4. The evidence that the petitioner is relying upon to support the Petition; and,
5. If the child is a non-member Indian, a statement that notice to the child's Tribe has been provided.

Section 4. *Scheduling the Initial Child-in-Need-of-Care Hearing; Service of Petition.***A. *Scheduling the Initial Hearing***

Upon filing the Petition, the Clerk of Tribal Court will schedule a "Child In Need of Care" Hearing no later than five (5) judicial days from the date of filing.

B. *Service of the Petition*

1. The petitioner shall serve the Child-in-Need-of-Care Petition along with a Notice of Hearing that sets forth the time, date and location of the Hearing on the child's parent(s), guardian, custodian or caretaker and the non-member Indian child's Tribe if applicable.

2. Service of the Petition and Notice of Hearing may be made by personal delivery, certified mail with return receipt requested, regular mail or any other method of service approved by the Tribal Court. The Petition and Notice of Hearing shall be served as soon as possible, and at least 24 hours, before the Hearing, *except as follows:*

- a. Due to the time constraints associated with holding the initial hearing, the Tribe may submit a declaration that notice of the initial hearing was provided to one or more persons by telephone, fax, email, or other method;
or,

b. The Tribe may submit a declaration that notice of the initial hearing was not provided to one or more persons but that diligent efforts have been made to notify the child's parent(s), guardian, custodian or caretaker and the non-member Indian child's Tribe, if applicable, and service has not yet been accomplished for good cause.

3. A Proof of Service must be filed with the Tribal Court at the initial hearing, *except where* a Declaration has been submitted by the Tribe in accordance with Section 2(a)-(b).

Section 5. Initial Child in Need of Care Hearing.

A. Purpose of the Initial Hearing

1. At the Initial Hearing, the petitioner bears the burden of establishing that the child is in need of care and, if applicable, that the child should be or should continue to be placed outside of his or her home.

2. The Tribal Court will review the Petition, supporting documents, and hear from the petitioner and the child's parent(s), guardian, custodian, or caretaker, including any other relevant witnesses. The Tribal Court will determine whether there is sufficient probable cause to set a Child-in-Need-of-Care Hearing. The Tribal Court will further determine whether the child should be placed or remain outside of his or her home pending the Child-in-Need-of-Care Hearing. The Tribal Court may also appoint a Guardian Ad Litem, spokesperson or advocate to represent the child's interests. The child's parent(s), guardian, custodian or caretaker may be represented by counsel at their own expense or, if appropriate and funding is available, may be appointed a spokesperson or advocate.

B. Removal Findings

1. Where the Tribal Court determines that the child should be, or should continue to be, placed outside of his or her home pending the Child-in-Need-of-Care Hearing, the Tribal Court's order shall make specific findings that the continued residence in the child's home would be contrary to the welfare of the child and that out-of-home placement would be in the child's best interest. The Tribal Court's findings will be based on one or more of the following findings:

A) The child is suffering from an illness or injury and no parent, guardian, custodian, caretaker or other person is providing adequate treatment or necessary care;

B) The child is in immediate danger of harm from his or her surroundings and removal is necessary to protect his or her health, safety or welfare;

C) The child will most likely be subject to injury by others if not placed outside of his or her home;

D) The child has been abandoned by his or her parent, guardian, custodian or caretaker;

E) No parent, guardian, custodian, caretaker or other person is able or willing to provide adequate supervision and appropriate care for the child, including without limitation appropriate subsistence, shelter, health care, and education; or,

F) The child will most likely run away so that he or she will be unavailable for further proceedings.

2. The Tribal Court's order shall also find that temporary care and custody are to be vested with the Tribe's Indian Child Welfare Department or other appropriate Tribal agency or entity.

C. Reasonable Efforts

Upon finding that the child should be removed from his or her home, or continue to be removed from his or her home, the Tribal Court order must make specific findings regarding whether reasonable efforts have been made to prevent or eliminate the need for removal.

D. Interim Findings Order; Child Not Removed

The Tribal Court may issue an interim order that probable cause exists to find that the child is in need of care but does not need to be removed from his or her home, or should be returned to his or her home, pending the Child-in-Need-of-Care Hearing.

E. Interim Findings Order; Corrective Steps

The Tribal Court may order the child's parent, guardian, custodian or caretaker to take immediate corrective steps to resolve the problems giving rise to the Child-in-Need-of-Care Petition.

Section 6. *Peacemaker Mediation; Talking Circles; Traditional Dispute Resolution.*

A. Non-Adversarial Approaches Preferred

1. It is the Tribe's preference that a non-adversarial approach be used to resolve internal conflicts involving Indian children and their families. The Tribal Court, at any stage of a proceeding under this Code, may order the parties to participate in a confidential Tribal Peacemaker Mediation, or other culturally appropriate dispute resolution mechanism, to resolve the matter. A Tribal Peacemaker Mediation, or other culturally appropriate dispute resolution mechanism, will be conducted and facilitated according to the policies and procedures established by the Tribe.

2. It is the Tribe's preference that a family decision-making model is used when appropriate. The Tribal Court, at any stage of a proceeding under this Code, may order the parties to participate in a Talking Circle or Family Conference with the Tribe's ICW Department or designated Tribal representative. This Family Conference or Talking Circle will provide the child's family with an opportunity to discuss the underlying issues that led to the need for Tribal intervention and establish a plan to ensure the health, welfare, safety and well-being of the child. A Family Conference or Talking Circle will be conducted and facilitated according to the policies and procedures established by the Tribe.

B. Presentation to Tribal Court; Reports

1. Once the parties have engaged in a form of Traditional Dispute Resolution, the Tribe will present a report outlining any outcomes or agreement to the Tribal Court.

2. The Tribal Court may adopt the recommendations provided by the Tribe's report, Tribal Case Plan, Agreement, or other document; order the family to attend an additional mediation, conference or other culturally appropriate dispute resolution; amend the Tribal Case Plan or Agreement; set the matter for further hearing; or make any Order that will promote a non-adversarial, culturally appropriate approach to resolving the matter.

Section 7. *Child-in-Need-of-Care Hearing.*

A. Scheduling a Child-in-Need-of-Care Hearing

1. Within fifteen (15) judicial days from the issuance of the Initial Hearing Order, the Tribal Court shall hold a Child-in-Need-of-Care Hearing.

2. Notice of the hearing shall be issued to the child's parent(s), guardian, custodian, or caretaker, as appropriate, child's representative and child's Tribe.

3. At the request of any party, the fifteen (15) day requirement may be lengthened or shortened by the Tribal Court upon a showing of good cause, but in no event shall the Child-in-Need-of-Care Hearing be extended beyond sixty (60) days from the date a child has been removed from his or her home.

4. At the request of any party, the Child-in-Need-of-Care Hearing may be combined with the Dispositional Hearing by the Tribal Court.

B. The Purpose of the Child-in-Need-of-Care Hearing

The purpose of the Child-in-Need-of-Care Hearing is to determine whether or not the allegations in the Petition are supported by a preponderance of the evidence. The parent(s), guardian, custodian or caretaker shall have the right to be represented at their own expense, call their own witnesses and to question witnesses called by any other party.

C. Tribal Report

The Tribe will submit a report before the Child in Need of Care hearing that addresses:

1. The reasons that the Tribe filed a Child in Need of Care Petition;
2. The evidence upon which the Tribe is relying to support the Petition;
3. The preventive steps taken to prevent the child's removal, if applicable;
4. The appropriateness of the child's out-of-home placement, if applicable;
5. The availability of relative or Tribal placements, if applicable;
6. Recommendations for treatment, evaluations, or other services that would enable the child to safely return to his or her home or, if not removed, stabilize the home environment; or, the reason that treatment, evaluations, or other services would not likely enable the child to safely return to his or her home;
7. Recommendations for visitation, if applicable; and,
8. Any other relevant information.

D. Tribal Court Findings

1. If the Tribal Court finds that the child is in "need of care" and it is in the child's best interest to remain under the jurisdiction of the Tribal Court, the Court shall set the case for a Dispositional Hearing.

2. If the Tribal Court determines that the child should be removed from his or her home at the conclusion of the Child-in-Need-of-Care Hearing, the Tribal Court order shall set forth the appropriate findings.

3. If the Tribal Court determines that reasonable efforts to reunite the child with his or her parent(s), guardian, custodian or caretaker are not required, the Tribal Court will schedule a Permanency Hearing within thirty (30) days from issuance of its Child-in-Need-of-Care Order.

4. The Tribal Court may order the child's parent, guardian, custodian or caretaker to take, or continue to take, corrective steps to resolve the problems giving rise to the Child-in-Need-of-Care Petition.

5. The Tribal Court may order an interim visitation schedule between the child and his or her parent, guardian, custodian, caretaker, siblings, extended family, or Tribal Community, as appropriate.

Section 8. *Dispositional Hearing.*

A. Scheduling the Dispositional Hearing

The Tribal Court shall set a Dispositional Hearing within thirty (30) days of issuance of the Child-in-Need-of-Care Order. The thirty (30) day deadline may be lengthened or shortened

at the written request of any party and upon a finding by the Tribal Court of good cause.

B. Purpose of the Dispositional Hearing

The Tribal Court will hear from the child's parent(s), guardian, custodian, or caretaker, the child (if age appropriate), and any other relevant witnesses. The Tribal Court shall review the information and recommendations set forth in the Tribal Case Plan, Tribal Report or other relevant documents. The child's parents, guardian or custodian will be informed at the hearing, and given written notice, that their parental rights may be modified or terminated if they do not successfully complete their Tribal Case Plan.

C. The Tribal Court's Dispositional Order

1. The Tribal Court may order the child, child's parent(s), guardian, custodian, or caretaker to undergo evaluation and treatment for any relevant issues, including without limitation drug or alcohol abuse, domestic violence, physical or sexual abuse, or psychological issues. The Court may order that the child, parent, guardian, custodian or other caretaker attend classes, counseling, or engage in other services or activities for the benefit of the child and his or her family that are likely to promote the best interest of the child and family reunification.

2. The Tribal Court may order that the child remain in an out-of-home placement until further order and may issue interim orders as necessary for the protection of the child and reunification of the family.

3. If a child has been removed from his or her home, the Tribal Court may order visitation to occur between the child and the parent, guardian, custodian, caretaker, siblings, extended relatives or other persons as appropriate. The Court may also authorize trial home visits not to exceed six (6) months.

4. The Tribal Court will review the Tribal Case Plan and adopt its recommendations and findings *unless* the Court finds good cause to amend or modify the Tribal Case Plan. The Tribal Court shall make specific findings regarding any amendment or modification of the Tribal Case Plan, and shall adopt the Tribal Case Plan as amended or modified.

5. The Tribal Court will review the child's Tribal Case Plan every ninety (90) days, or as determined to be necessary and appropriate by the Tribal Court, *so long as* case reviews are held at least once every six (6) months.

Section 9. Tribal Case Plan.

A. Preparation of the Tribal Case Plan

The Tribal Case Plan shall consist of a written document for each child under the jurisdiction of the Tribal Court. The plan shall be a discrete part of the Court record and will be

jointly developed by Tribe's ICW Department, or other appropriate Tribal department or entity, and the child's parent(s), guardian, custodian, caretaker, extended family, and other Tribal representatives or elders, as appropriate. The case plan shall be presented by a Tribal representative at the Dispositional, Review, Permanency and Post-Permanency Hearings. The Tribal Case Plan shall be made available to all parties at least ten (10) days prior to all hearings.

B. Content of the Tribal Case Plan

1. Where a child has been removed from his or her home, the case plan shall be prepared no later than thirty (30) days from the date of the child's removal. The Tribal Case Plan shall be designed to achieve a safe and culturally appropriate placement for the child in close proximity to the child's home and Tribal community, consistent with the best interests of the child.

2. The plan shall include detailed services designed to reunite the family or, in a case where the child has remained in the home, services that will address the causes giving rise to the Child-in-Need-of-Care Petition.

3. The plan shall include a proposed visitation schedule for the child with his or her parent, guardian, custodian, caretaker, siblings, extended family, and Tribal community.

4. If services or reunification services are determined not to be in the best interest of the child, the case plan shall set forth the Tribe's recommendation for permanency and document the steps needed to finalize a culturally appropriate permanent placement.

Section 10. Tribal Reports.

A. Preparation of Tribal Reports; Dispositional, Review, Permanency, Post-Permanency

1. The Tribe's ICW Department, or other appropriate department or entity, will submit a report before the Dispositional, Review, Permanency and Post-Permanency Hearing that addresses:

A) The appropriateness of the child's placement, including whether it is meeting all of the child's health, welfare and safety needs while protecting and preserving the child's connection to his or her Tribe, Tribal culture, Tribal relatives and Tribal community;

B) The extent of the Tribal ICW Department's compliance with the Tribal Case Plan in making reasonable efforts to safely return the child to his or her home, or if applicable, to complete whatever steps are necessary to finalize a culturally appropriate permanent placement for the child;

C) The extent of the child's, parent's, guardian's, custodian's, or other caretaker's compliance with the Tribal Case Plan, if appropriate;

D) The extent of progress which has been made towards addressing, alleviating

and mitigating the circumstances necessitating the filing of the Child-in-Need-of-Care Petition;

E) The likely date by which the child will be returned to and safely maintained in his or her home, appointed a legal guardian, placed permanently with a relative or in a Tribally approved home, adopted, emancipated, or placed in another permanent living arrangement; and,

F) Any other relevant information.

2. The Tribal ICW Department's report shall be completed and submitted to the Tribal Court and all parties at least ten (10) days prior to a hearing.

Section 11. *Review Hearings.*

A. *Timing of Review Hearing*

The Tribal Court shall conduct a review hearing every ninety (90) days. Review hearings will commence from the date the Dispositional Order was issued. Review hearings may be held more or less frequently, as ordered by the Tribal Court, but in no event less than every six (6) months.

B. *Case Review of Child Not Removed From His or Her Home*

At the twelve (12) month review in a case where the child has remained in his or her home, the Tribe's report shall either recommend that the case be dismissed or that the Tribal Court retain jurisdiction to continue monitoring the home or provide family preservation and preventive services.

Section 12. *Permanency Hearing.*

A. *Timing of the Permanency Hearing*

1. A Permanency Hearing provides an opportunity for the Tribal Court to ensure that the child will be placed in a culturally appropriate, safe, nurturing and permanent home.

2. A Permanency Hearing will be held within ninety (90) days from the issuance of a Child-in-Need-of-Care Order when it has been determined that reasonable efforts and reunification services are unnecessary.

3. Where a child has been removed from his or her home, a Permanency Hearing shall be held no later than eighteen (18) months after the date the child is considered to have entered foster care. A child is considered to have entered foster care on the earlier of: i) the date of the first judicial finding that the child is in need of care; or ii) the date that is sixty (60) days after the date on which the child is removed from home.

4. All parties shall receive Notice of the Permanency Hearing at least ten (10) days prior to the hearing date.

B. Purpose of the Permanency Hearing

1. At the Permanency Hearing, the Tribal Court shall order one of the following permanent plans for the child and specify the date that the plan will be implemented:

- A) Return the child to his or her parent, guardian, or custodian;
- B) Continue reunification services for an additional period of time;
- C) Proceed with adoption or tribal customary adoption by a relative, extended family member, Tribally approved home, foster parent or other non-relative;
- D) Proceed with legal guardianship;
- E) Proceed with an alternative permanent placement with a relative, extended family member, Tribally approved home, foster parent or other non-relative;
- F) Proceed with emancipation; or,
- G) Provide another specified permanent living arrangement if it would not be in the best interest of the child to proceed with one of the above listed options.

C. Tribal Court's Findings

1. The Tribal Court's Findings and Conclusions shall include the following:

- A) The child's placement is necessary and appropriate because a return to the child's home would present a risk of immediate danger and harm to the child;
- B) Persons present at the hearing and whether absent parties were provided with appropriate notice. The order shall also verify that reports, including the case plan, offered into evidence have been provided to all parties in advance of the hearing;
- C) A finding, when appropriate, that the Tribal ICW Department has complied with the case plan by making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize a culturally appropriate permanent placement for the child;
- D) What, if any, progress has been made by the parent(s), guardian, custodian or other caretaker toward alleviating or mitigating the causes that necessitated the removal of the child or the filing of the Child-in-Need-of-Care Petition;

E) A statement addressing special factors or conditions of the child that are identified as special needs, what services are to be provided to address those needs and who is responsible for providing those services;

F) The Tribal Court's determination of the permanent plan for the child, including the reasons that the plan is in the best interest of the child. The Order shall state the steps to be taken and the anticipated timeframe for accomplishing the permanent placement goal and necessary services. If the child is sixteen (16) years or older, the Tribal Court shall find that the services set forth in the plan include those needed to assist the child in making the transition from foster care to independent living;

G) If the permanency plan is modification of parental rights and the petition has not yet been filed, the Order should state the expected time frame for the filing of the petition for modification of parental rights is thirty (30) days. If the petition has been filed the Tribal Court should proceed to schedule a hearing date; and,

H) The scheduling of a post-permanency review hearing within ninety (90) days, or as necessary.

Section 13. *Post-Permanency Review.*

A. *Timing of the Post-Permanency Review Hearing*

The Tribal Court shall conduct a Post-Permanency Review Hearing no later than ninety (90) days following the issuance of the Permanency Order or Order Modifying Parental Rights. The Tribal ICW Department, or other appropriate Tribal entity, shall file a report addressing the progress of the permanency plan and the report shall be filed with the Tribal Court and parties at least ten (10) days prior to the hearing.

B. *The Purpose of the Post-Permanency Review Hearing*

1. *Reunification.* In all cases where reunification is the permanency plan for the child, the Tribal Court shall determine at the review hearing whether reunification has been achieved. If reunification has not been achieved, the Court may set another review hearing and may request that an alternative plan for guardianship or permanent custody be presented, or that the case plan be amended, as necessary.

2. *Permanent Guardianship or Custody.* Guardianship and other permanency plans should be fully implemented within ninety (90) days from the Permanency Hearing unless there are compelling reasons otherwise. If permanent guardianship or custody has not been achieved, the Tribal Court shall set another ninety (90) day review hearing in order to grant permanent guardianship or permanent custody or to issue a new permanency plan.

3. *Adoption.* Where the rights of the parents have been modified and the permanency

plan provides for adoption with the family the child has been residing with, a review hearing shall be held to ensure that finalization of the adoption is progressing. In cases where the rights of the parents have been modified and an adoptive home is being recruited, a review hearing shall be held to determine what efforts have been made, since the modification of parental rights hearing, and to identify potential adoptive homes both locally and in other jurisdictions if necessary. The Tribal Court shall continue to hold review hearings in permanency plan cases that provide for adoption until a final hearing date is scheduled to issue the order of adoption.

4. *All Other Permanency Plans.* All other permanency plans that provide for a specified permanent living arrangement other than reunification, adoption, guardianship or permanent custody, shall be reviewed to determine whether the case is ready for finalization or whether a new permanency plan is needed.

Section 14. Final Hearing.

A. Timing of the Final Hearing

1. It shall be the goal of the Tribal Court to conclude a Child-in-Need-of-Care case within eighteen (18) months from the date the child is placed in foster care, or, if the child has not been removed from his or her home, within twelve (12) months from the date the child is determined to be in need of care.

2. A final hearing shall be scheduled within sixty (60) days from a Tribal Court finding that the goal of a child's permanency plan has been achieved. The Tribal Court may lengthen or shorten the period of time upon request of any party for good cause. All parties to the case shall be properly noticed at least ten (10) days before the hearing.

B. Tribal Court Findings

1. At the conclusion of the hearing the Tribal Court shall issue Findings of Fact and Conclusions of Law that include the following:

A) Who was present at the hearing and whether all of the parties were provided with adequate notice;

B) If any issues were contested, the Tribal Court's decision and reasons for that decision;

C) A finding as to whether the adoption, guardianship or other permanent placement is in the best interests of the child and in accordance with the Tribe's laws, customs, traditions and culture;

D) A finding as to whether the child's placement is culturally appropriate and in accordance with the Tribe's laws, customs, traditions and culture;

E) A finding that full disclosure of the child's medical and family history and current or potential challenges has been made;

F) A finding that reasonable efforts were made to finalize a permanent plan;

G) A statement and description of the new legal relationship and its terms and conditions, including any post-finalization contact, visitation, or other agreements;

H) In an adoption, a finding that the rights of the birth parents have been relinquished or modified and that any necessary consent to the adoption has been obtained, *except where* an adoption is performed pursuant to Tribal law and custom and allows for adoption without the termination of parental rights;

I) A finding regarding visitation, custody and support orders with regard to the biological parent(s), relatives, extended family members, or caretakers as appropriate;

J) A finding that the Tribal Court's involvement in this case is concluded and its jurisdiction over the matter is terminated; and,

K) A finding regarding the parties rights to appeal the Tribal Court's Decision.

Chapter Four. Adoption and Guardianship

I. Adoption

Section 1. Policy; Who May Be Adopted.

This Code prefers that permanency for Indian children is achieved without terminating parental rights to a Tribal member child unless necessary and appropriate and supported by the Tribe. Pursuant to Tribal law and custom, a Torres Martinez child may be adopted without a termination of parental rights. Any unmarried child may be adopted by an adult.

Section 2. Modification of Parental Rights.

An unmarried child may not be adopted until his or her parents' parental rights have been modified. Parental rights can be modified either voluntarily, involuntarily or upon the death of one or both parents. Pursuant to Tribal law and custom, a Torres Martinez child may be adopted with a partial modification of parental rights that does not legally sever the parent-child relationship.

A. Involuntary Modification

Involuntary modification of parental rights may be ordered upon the filing of a Petition to Modify Parental Rights or by any person who seeks to adopt the unmarried child. Grounds to modify parental rights shall include the following:

1. The minor has been abandoned by one or both parents as defined by this Code;
2. The minor has been abused or neglected by one or both parents;
3. One or both parents is suffering from the habitual use of alcohol or any other controlled substance as defined under applicable tribal or federal law which renders them incapable of appropriately caring for and supervising the child;
4. One or both parents has been declared by a court of competent jurisdiction to be severely developmentally or mentally disabled, incapacitated or mentally ill, rendering him or her incapable of appropriately caring for and supervising the child;
5. Any other grounds upon which, by clear and convincing evidence, demonstrate that that one or both parents cannot or will not appropriately care for and supervise the minor.

B. Voluntary Modification

1. Voluntary modification of parental rights shall be ordered only if the parent(s) provide valid consent to the modification. Consent will be deemed voluntary if:

- A) It is given more than (10) days after the birth of the child;
- B) It is given in the presence of a Tribal Court Judge; a designated pro tem judge; or before any judge in a court of competent jurisdiction;
- C) The person relinquishing parental rights signs a statement declaring that he or she was fully informed of the legal ramifications of his or her voluntary consent to modification of parental rights and the consenting parent knowingly and voluntarily relinquished his or her parental rights; and,
- D) The person relinquishing parental rights is informed that he or she has the right to be provided with an interpreter to explain the voluntary consent, its consequences, and his or her right to withdraw the voluntary consent, the time limit to do so and the procedure for doing so.

2. Voluntary consent to modify parental rights can be withdrawn anytime within ten (10) days of providing voluntary consent. After ten (10) days, withdrawal can only be made with the Tribal Court's permission. The Tribal Court shall give permission only if it finds consent was given under duress, coercion, or is otherwise invalid.

Section 3. *Petition to Modify Parental Rights.*

1. A Petition to Modify Parental Rights may be filed by the Tribe or any adult person seeking to adopt an unmarried child. The Petition shall contain the following information:

- A) The name and address of the petitioner and the relationship with the child;
- B) Name, date of birth and address of the child;
- C) Names and addresses of the child's legal parents, if known;
- D) Grounds for modifying parental rights with sufficient factual detail to place the legal parents on notice of the allegations against them;
- E) Name and address of the child's Tribe; and,
- F) Whether the legal parents are voluntarily consenting to the modification of their parental rights.

2. The Petition to Modify Parental Rights must be served on the legal parent(s) of the child and the child's Tribe. Service shall be made by personal service, certified mail with a return receipt, regular mail, or any other method of service approved by the Tribal Court. Such alternative service may include but is not limited to publication in the local newspaper where the parent(s) were last known to reside, telephone, and email. If the identity or the whereabouts of the parent(s) are unknown, and upon a showing of due diligence by the petitioner to identify and locate the parents, the Tribal Court may proceed to hearing on the Petition without any further notice to the parents. A proof of service, or declaration documenting due diligence to effectuate such service, must be filed with the Tribal Court.

3. Upon the filing of the proof of service or a finding by the Tribal Court that service is no longer necessary, the matter shall be set for hearing. A Notice of Hearing shall be issued by the Tribal Court and shall set forth the time, date, and location of the hearing. The parties shall be advised that they have a right to be represented at the hearing at their own expense. The Notice of Hearing shall be served on the parties by the Tribal Court. A hearing will be held within thirty (30) days from the date the Notice of Hearing is served on the parties. A request for a continuance of the hearing may be made by any party and granted upon a showing of good cause.

4. The standard of proof for granting a Petition to Modify Parental Rights shall be clear and convincing evidence. After hearing from all parties and witnesses, if any, and a review of all relevant documents, or the entry of the voluntary consent, the Tribal Court shall issue a written order within thirty (30) days. If the Tribal Court grants the Petition to Modify Parental Rights, the petitioner may proceed with a Petition for Adoption.

A. Tribal Membership Status

Modification of parental rights shall not affect the child's tribal membership or eligibility for membership, the child's rights or privileges as a tribal member, or the jurisdiction of the Tribal Court over the child.

B. Effect of Modification of Parental Rights; In Whole or In Part

1. If a parent's rights are modified in whole, the parent no longer has any right to the child or any responsibility for that child's care and custody. A modification in whole completely severs the parent-child relationship.

2. A modification of parental rights in part may terminate the parent's rights to legal custody of the child; physical custody of the child; the parent's responsibility to financially or otherwise support the child; or as otherwise ordered by the Tribal Court. The parent may maintain certain parental rights, including the right to visit the child, as ordered by the Tribal Court.

Section 4. Adoption Petition.**A. Initiation of an Adoption**

An adoption proceeding shall not be initiated until the parental rights of the parent(s) have been modified pursuant to this Code; terminated by a court of competent jurisdiction; or as provided pursuant to tribal law and custom. Once parental rights have been modified or terminated, or a finding has been made that parental rights need not be modified or terminated to proceed pursuant to Tribal law and custom, a Petition for Adoption may be filed with the Tribal Court by the Tribe or by any person wishing to adopt the child.

B. The Content of the Adoption Petition

The Adoption Petition shall state the following:

1. The relationship, if any, of the petitioner to the child;
2. The name, sex, date of birth, and residence of the child;
3. The names and addresses of the child's parents, guardian, custodian, or caretaker. If the child is in shelter care, the location and the date he or she was placed in shelter care;
4. The tribal affiliation of the petitioner, if applicable; and,
5. A certified copy of the Tribal Court order modifying parental rights; order from a court of jurisdiction terminating parental rights; or Tribal Court findings that parental rights need not be modified or terminated to proceed pursuant to tribal law, customs or traditions.

Section 5. *Scheduling of the Adoption Hearing; Notice.*

A hearing date shall be set within forty-five (45) days from the filing of the Petition for Adoption. The Notice of Hearing and Petition may be served by personal delivery, certified mail with return receipt requested, regular mail or any other method of service approved by the Tribal Court. The Petition and Notice of Hearing shall be served no less than ten (10) days before the Adoption hearing. A proof of service must be filed with Tribal Court.

Section 6. *Pre-Adoption Report.*

A pre-adoption report shall be prepared and served on all parties at least ten (10) days prior to the adoption hearing. The report shall be prepared by the ICW Department or other Tribal agency or representative. The pre-adoption report shall present whether the adoption is in the best interest of the child and in accordance with the Tribe's laws, customs, traditions and culture. If adoption without termination of parental rights is preferred, the report shall so state. Adoptions that will result in the substantial alienation of an Indian child from his or her Tribe, culture, or heritage shall not be favored. The following placement preferences will be followed in evaluating an adoptive placement, *except that* the Tribe may alter this placement preference order by Tribal Resolution:

1. A relative;
2. An extended family member;
3. A tribal member family;
4. A tribally approved home;
5. An Indian family.

Section 7. *Order of Adoption or Tribal Adoption.*

After the Tribal Court has heard all the evidence, reviewed the pre-adoption report and determined that adoption or tribal adoption is in the best interest of the child, the Tribal Court shall enter an Order of Adoption or Tribal Adoption. The Order shall be kept on record with the Tribal Court, the child's Tribe, the Bureau of Indian Affairs and the State of California Office of Vital Statistics.

Section 8. *Post-Adoption Agreements.*

The Tribal Court may approve a Post-Adoption Agreement and enter it into the record. Such agreements may include, but are not limited to, visitation, contact and all other forms of contact between the child and his or her biological parent(s), guardians, custodians, caretakers, siblings, relatives, extended family members, and Tribe.

II. Guardianship

Section 1. Purpose.

It is the purpose of this section to provide for the appointment of guardians for children whose parents are deceased or are otherwise unable or unwilling to care for them on a permanent or temporary basis. This Code prefers guardianship as a permanency vehicle for Tribal member children where necessary, appropriate and supported by the child's Tribe.

Section 2. Authority of the Tribal Court.

The Tribal Court shall have the authority to appoint guardians for the person and property of a child who is under the jurisdiction of the Tribal Court. The Tribal Court shall have the authority to place conditions upon a guardianship, to limit the powers of the guardianship and to define the terms of the guardianship.

Section 3. Who is Eligible to be a Guardian.

Any person eighteen (18) years or older may be appointed guardian of a child, including his or her property. A person may be disqualified as an eligible guardian if he or she:

1. Is found to be incompetent;
2. Has been convicted of a crime involving child abuse, sexual abuse, or domestic abuse and cannot demonstrate a substantial passage of time and appropriate, documented rehabilitation;
3. Is a non-resident of the Torres Martinez Reservation and has not consented to the jurisdiction of the Tribe;
4. Any person the Tribal Court finds unsuitable to care for a child based on documented evidence.

Section 4. Petitioning for Guardianship.

The Tribe or any interested person may file a petition for the appointment of a guardian of an Indian child. A petition for guardianship shall state the following:

1. The name, age, residence and tribal affiliation of the child;
2. The name, age, residence and tribal affiliation of the petitioner or the person whom petitioner asks to have appointed guardian;
3. The name, age, residence and tribal affiliation of the child's extended family;

4. The name, age, residence and tribal affiliation of the person or facility having custody of the child and the date the child was placed in that custody;
5. The reason why the appointment of a guardian is necessary and the reason why the person requesting to be appointed should be the guardian;
6. The approximate value and description of the child's property, including trust property and any payments to which he or she is entitled;
7. Any limitations requested on the powers and duties of the guardian; and,
8. The requested term of the guardianship.

Section 5. *Guardianship Hearing.*

1. A guardianship hearing shall be held within forty-five (45) days from the filing of the Petition for Guardianship.
2. Notice of the Hearing and Petition for Guardianship shall be given to all persons named in the Petition. The Hearing Notice and Petition may be made by personal delivery, certified mail with return receipt requested, regular mail or any other method of service approved by the Tribal Court. The Petition and Notice of Hearing shall be served no less than ten (10) days before the Guardianship hearing. A proof of service must be filed with Tribal Court. The Petitioner, or the Tribe if not the Petitioner, may submit a declaration demonstrating that diligent efforts have been made to locate and serve the Notice of the Hearing and Petition for Guardianship and good cause exists to waive the service requirement.
3. After considering the Petition and hearing testimony from all interested parties and witnesses, the Tribal Court shall issue an Order that specifically addresses the following:
 - A) If there is a demonstrated need to appoint a guardian;
 - B) If it is in the best interest of the child to appoint the person seeking the guardianship appointment, including whether the guardian will ensure that the child's connection to his or her Tribe, Tribal culture, Tribal community, and Tribal relatives will be protected and encouraged;
 - C) The term of the guardianship, including any limitations on the powers of the guardian;
 - D) If the child has property to be managed, whether the guardian will be required to post a bond or make an annual accounting to the Tribal Court.
4. Following the entry of an Order Appointing a Guardian, the Tribal Court Clerk shall issue Letters of Guardianship to the person appointed. The Letters of Guardianship shall set

forth the name of the person appointed as guardian, the name and age of the child, and the powers granted to the guardian. A Letter of Guardianship shall be affirmed by the guardian and certified by the Tribal Court.

Section 6. *Guardian Bond.*

If the child's estate includes real or personal property is: (1) valued at more than \$7,500; (2) has monthly income, exclusive of public benefits payments, valued at \$1,000 or more; and (3) not all the income from the estate will be used for the benefit of the child, the Tribal Court may require the guardian to file a bond or other security payable to the Tribal Court in a sum fixed by the Tribal Court to protect against the guardian's mismanagement of the child's estate.

Section 7. *Annual Accounting.*

If the child's estate includes real or personal property valued at \$7,500 dollars or more, the Tribal Court may require the guardian to file a written report annually accounting for the guardian's administration of the property.

Section 8. *Duties of a Guardian.*

The duties of a guardian shall include the following, unless limited by the Tribal Court:

1. Provide for the care, education, custody and supervision of the child;
2. Make all decisions with respect to the child that the child's parent(s) would have the right to make, including without limitation consent for medical treatment and decisions regarding education, religion, and cultural upbringing;
3. Preserve, protect and manage the child's property for the best interest of the child, to the extent consistent with tribal and federal laws;
4. File with the Tribal Court within one month after his or her appointment a list of all the property of the child that has come into possession of the guardian;
5. If necessary and ordered, file with the Tribal Court an annual accounting of the guardian's administration of the property of the child; and,
6. If necessary and ordered, apply to the Tribal Court for an order authorizing the sale of any property of the child or authorizing payments out of the estate of the child to the child or on his or her behalf;
7. Any other responsibilities or duties ordered by the Tribal Court.

Section 9. *Removal of a Guardian.*

The Tribal Court may remove a guardian if the guardian is no longer qualified or if removal is in the best interest of the child. The Tribal Court may appoint a successor guardian and require the guardian to deliver to the successor all property of the child.

Section 10. *Termination of Guardianship.*

A guardianship shall be terminated automatically upon the eighteenth (18) birthday of the child or upon the expiration of the terms of the guardianship stated on the Tribal Court order. The guardianship may also terminate if the Tribal Court determines the guardianship is no longer necessary and appropriate.

Chapter Five. *Transfer of Jurisdiction***Section 1. *Notice to Other Tribes.***

If the Tribal Court or any party in a child protection proceeding under this Code has reason to believe that the child is a member of or eligible for membership in a Tribe other than the Torres Martínez Desert Cahuilla Indians, the Tribal Court Clerk shall be directed to give written notice of the proceeding to the child's Tribe. The notice shall ask that the child's Tribe respond in writing within fifteen (15) days of receiving the notice and to state whether the Tribe intends to act in the matter or seek transfer of the case. The notice shall include written instructions on how the child's Tribe may intervene into the child protection proceeding if it so chooses, and that a copy of the Tribe's Children's Code will be provided upon request.

Section 2. *Transfer of Jurisdiction; Hearings.*

1. If a non-member child's Tribe files a motion requesting transfer of a pending Child-in-Need-of-Care, adoption or guardianship action, the Tribal Court shall schedule a hearing within thirty (30) days from the filing of the Motion to Transfer.

2. Notice of Hearing on the Motion to Transfer shall be served on all parties to the action and the child's Tribe. The Tribal Court may dispense with holding a hearing on a Motion to Transfer if all the parties to the action stipulate to the transfer and the Tribal Court finds that it is in the best interest of the child to transfer the case.

3. At the Motion to Transfer hearing, the Tribal Court shall hear from all the parties and the child's Tribe and weigh the following factors in deciding whether or not a case should be transferred to the child's Tribe:

A) Whether the non-member child's Tribe has jurisdiction;

- B) The wishes of the parent, guardian, custodian or other caretaker;
- C) The wishes of the child, if he or she is able to understand the meaning of a transfer of jurisdiction;
- D) The recommendation of the ICW or other Tribal representative;
- E) The residence of the child and the child's parent(s), guardian, custodian or caretaker and their respective tribal affiliation(s);
- F) The child's ties and connections to the tribal communities involved, as well as the child's parent(s), guardian, custodian or caretaker's; and,
- G) Whether the child's Tribe or Tribes have timely responded to the notice informing the Tribe of the Tribal Court proceeding.

Section 3. *Interim Orders To Protect The Child During Transfer Proceedings.*

The Tribal Court may make any orders which will protect the child's best interests pending the outcome of any transfer of jurisdiction proceeding.

Section 4. *Tribal Court's Order.*

The Tribal Court shall issue an order either transferring the case to the child's Tribe or retaining jurisdiction over the case. The Tribal Court's order should clearly state the grounds for its decision.

Section 5. *Transfer of Jurisdiction to Tribal Court; Recognition of Other Court Orders.*

A. *Accepting Jurisdiction from Another Court*

This Code prefers that all cases involving children subject to the Tribe's jurisdiction be transferred to the Tribal Court. The Tribal Court has the authority to accept or decline a transfer of any action involving an Indian child, including his or her non-Indian or non-member sibling, from a federal, tribal or state court. The Tribal Court further has the authority to accept or decline a transfer of any action involving a child where the parents, guardian, custodian, other caretaker or Indian tribe have consented to the transfer.

B. *Comity*

The Tribal Court may recognize Federal, Tribal, and State Court orders as a matter of comity if:

1. The court granting the order had jurisdiction;

2. The order does not violate the Tribe's Constitution, laws or policies; and,
3. The order does not violate the Indian Child Welfare Act.

Chapter Six. Administrative Provisions.

Section 1. Supplemental Petitions

Once a child has been found to be a "Child in Need of Care," and placed in the care and custody of the ICW Program, the ICW Department may file a Supplemental Petition alleging new charges based on current circumstances which, if true, would substantially change the nature of the case planning.

Section 2. Modifications to Tribal Court Orders

The Tribal Court may, with good cause, modify, revoke, or extend an order at any time upon the motion of any party.

Section 3. Grounds for Re-Hearing to Vacate, Reconsider, or Modify Tribal Court Orders

A child, parent, guardian, custodian or caretaker of a child who has been found to be a "Child in Need of Care" may within one year move the Court for a new evidentiary hearing on the grounds that there has been newly discovered evidence which was not known, or could not with due diligence have been made available at the original hearing, and which would affect the order or judgment. If it appears to the Court that there is such new evidence which might affect its order or judgment, it shall order a new hearing and enter such order or judgment, and make such disposition of the case, as is warranted by all the facts and circumstances and the best interests of the child.

Section 4. Testimony of a Child in Chambers or by Videotape.

The Tribal Court may, upon its own motion or the motion of any party, take testimony from any child who is the subject of the proceedings or is appearing as a witness in chambers, by videotape, or by any other appropriate method. The Court may exclude the child's parent(s), guardian, custodian or caretaker and other persons if the Court finds such action would be in the best interests of the child.

Section 5. Telephonic Appearances.

Telephonic appearances are authorized.

Section 6. *Days and Hours.*

Unless otherwise defined, reference to hours or days shall mean actual hours or days, excluding Saturdays, Sundays, and Tribal holidays.

Section 7. *Family Law and Child Support Orders*

The Tribal Court shall have the authority to issue family law and child support orders pursuant to this Code. The Tribal Court may, upon its own motion or the motion of any party, address the issue of child custody and support for any child who is currently under the Tribal Court's jurisdiction.

Chapter Seven. *Miscellaneous Provisions.***Section 1. *Severability***

If any provision of this Code, or its application to any person or circumstances, is determined to be invalid, such determination shall not invalidate any other provisions or applications of this Code.

Section 2. *Amendments*

This Code may be amended by the General Council and any such amendment shall be effective upon the date of the General Council's amendment in accordance with Tribal law.

Section 3. *Sovereign Immunity.*

Nothing herein shall be construed as waiving the Tribe's sovereign immunity.


Section 4. *Effective Date; Certification.*

This Code shall be effective upon approval by the General Council.

CERTIFICATION

The undersigned hereby certify that the foregoing resolution was adopted at a duly called meeting of the Torres Martinez Desert Cahuilla Indians General Council, at which a quorum was present on the 8th day of October 2011, by a vote of 19 for, 1, against, and 3 abstaining.

EXECUTED THIS 8th DAY OF OCTOBER, 2011.



Mary-L. Resvaloso, Tribal Chairwoman

ATTEST:



Alesia Reed, Tribal Secretary