

ROUND VALLEY INDIAN TRIBES

A Sovereign Nation of Confederated Tribes

TRIBAL COUNCIL OFFICE
77826 COVELO ROAD
COVELO, CALIFORNIA 95428
PHONE: 707-983-6126
FAX: 707-983-6128



LOCATION: ON STATE HWY 162
ONE MILE NORTH OF COVELO
IN ROUND VALLEY
TRIBAL TERRITORY SINCE TIME BEGAN

ROUND VALLEY RESERVATION ESTABLISHED 1856

ROUND VALLEY INDIAN TRIBES

CHILD AND FAMILY PROTECTION CODE

Adopted February 20, 2014
Amended June 16, 2014

ROUND VALLEY INDIAN TRIBES

CHILD AND FAMILY PROTECTION CODE

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Chapter 1 - Short Title, Purpose and Definitions

1.010 - Short title

This ordinance shall be entitled "The Child and Family Protection Code" (Code).

1.020 - Purpose

The Child and Family Protection Code shall be liberally interpreted and construed to fulfill the following expressed purposes:

(a) To provide for the welfare, care and protection of the children and families on the Round Valley Indian Reservation;

(b) To preserve unity of the family, preferably by separating the child from his or her parents only when necessary;

(c) To take such actions as may be necessary and feasible to prevent the abuse, neglect or abandonment of children;

(d) To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis, whenever possible, on prevention, early intervention and community-based alternatives;

(e) To secure the rights of and ensure fairness to the children, parents, guardians, custodians or other parties who come before the Tribal Court under the provisions of this Code;

(f) To recognize and acknowledge the Tribal customs and traditions of the Round Valley Indian Tribes with regard to child-rearing.

1.030 - Definitions

(a) "Abandon" means the failure of the parent, guardian or custodian to provide reasonable support and to maintain regular contact with a child, including the providing of normal supervision, when such failure is accomplished by an intention on the part of the parent to permit such condition to continue for an indefinite period in the future. Failure to maintain a normal parental relationship with the child without just cause for a period of six months shall constitute prima facie evidence of abandonment. Custody with extended family members or voluntary consent to placement does not constitute abandonment.

(b) "Abuse" means the infliction of physical, emotional or mental injury on a child, or sexual abuse or sexual exploitation of a child; failing to maintain reasonable care and treatment or exploiting or overworking a child to such an extent that his health, mood or emotional well-being is endangered.

(c) "Adoptive placement" means the placement of a juvenile who is legally free for adoption with a family who is certified by a court of competent jurisdiction for adoption.

(d) "Adult" means an individual who is 18 years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.

(e) "Child" means an individual who is under the age of 18 years of age and has not been emancipated by order of a court of competent jurisdiction.

(f) "Child in need of care" means:

(1) A juvenile who is 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 juvenile who has not been provided with adequate food, clothing, shelter, medical care, education or supervision, by his or her parent(s), guardian or custodian necessary for his or her health and well-being;

(3) A juvenile who has been abandoned by his or her parent(s), guardian or custodian;

(4) A juvenile who has been or is likely to be physically, emotionally, psychologically or sexually abused by his or her parent(s), guardian or custodian;

(5) A juvenile who has been sexually abused by his or her parent(s), guardian or custodian;

(6) A juvenile whose parent(s), guardian or custodian(s) have knowingly, intentionally or negligently:

(A) Placed the child in a situation that may endanger his or her life or health; or

(B) Tortured, cruelly confined or cruelly punished him or her;

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

(g) "Child in need of services" means a child who persistently or habitually refuses to obey the reasonable or proper order of directions of his or her parent(s), guardian or custodian or who is beyond the control of such person, or who violates an ordinance establishing a curfew or who commits a juvenile offense or engages in other delinquent or criminal behavior. Such child is within the jurisdiction of the Juvenile Court which may adjudge such person to be a ward of the Court as a child in need of services.

(h) "Child Protective Services" means a program of identifiable and specialized child welfare which seeks to prevent dependency, abuse and exploitation of children by reaching out with social services to stabilize family life and to preserve the family unit by focusing on families where unresolved problems have produced visible signs of dependency or abuse and the home situation presents actual and potential hazards to the physical or emotional well-being of children. The program shall seek to strengthen parental capacity and ability to provide good child care.

(i) "Child Protective Service Worker" means an Indian Child Welfare Worker, Social Services Worker, Law Enforcement personnel or any person who performs the duties and responsibilities set forth in Section 1.030.

(j) "Consent decree" means a Court order which suspends a "juvenile offender" or "child in need of services" proceeding and continues the child under the supervision of the Court under terms and conditions negotiated with the juvenile counselor or

prosecuting officer and agreed to by all parties in an informal diversion conference and/or agreement.

(k) "Counsel" means an advocate, spokesperson or attorney. An attorney is licensed by the State of California and a member of the Round Valley Tribal Court Bar. An advocate or spokesperson is a lay counsel, not licensed by the State of California, who is a member of the Round Valley Tribal Court Bar.

(l) "Court" or "Tribal Court" means the Tribal Court of the Round Valley Indian Tribes.

(m) "Court Judge" means any duly appointed Judge of the Round Valley Indian Tribes.

(n) "Custodian" means a person, other than a parent or guardian, to whom legal and/or physical custody of the child has been given but does not include the person that has only physical custody.

(o) "Custody" or "legal custody" means the status created by order of the Round Valley Tribal Court or any other court of competent jurisdiction that vests the following rights and responsibilities:

- (1) The right to have physical custody of the child;
- (2) The right and duty to protect, train and discipline the child;
- (3) 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.

(p) "Detention" means the placement of a juvenile in a physically restrictive facility.

(q) "Disposition hearing" means a proceeding of the Tribal Court to determine how to resolve a case after it has been determined at the adjudicatory hearing that the child has committed a specific "juvenile offense(s)" or is a "child in need of care" or is a "child in need of services."

(r) "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.

(s) "Emergency foster care" means placement in a home that has been licensed to accept emergency placements of children at any hour of the day or night.

(t) "Extended family" means a person who has reached the age of 18 years and who is the child's grandparent, aunt or uncle, sibling, brother-in-law or sister-in-law, niece or nephew, first or second cousin or step-parent, godparent or any other person defined by the laws and customs of the Round Valley Indian Tribes.

(u) Family in Need of Services. A family may be determined to be in need of services when:

- (1) There is allegedly a breakdown in the parent-child relationship based on the refusal of the parent(s), guardian or custodian to permit a child to live with them or based on the child's refusal to live with his or her parent(s), guardian or custodian;
- (2) The conduct complained of presents a clear and substantial danger to the child's life or health and the intervention of the Tribal Court is essential to provide the treatment, rehabilitation or services needed by the child or his or her family;

(3) The child or his or her family is in need of treatment, rehabilitation or services not presently received and the intervention of the Tribal Court is essential to provide such treatment, rehabilitation or services;

(4) 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 Tribal Court is essential to provide the treatment, rehabilitation or services needed by the child or his or her family.

(v) "Foster home" means a home that has been licensed to accept placement of children under the age of 18 years.

(x) "Godparent(s)" means the sponsor(s) of the child in religious and cultural ceremonies as recognized by a church and/or Tribal law and custom.

(y) "Guardian ad litem" means a person appointed by the Court to represent the child's interests before the Court (but not the juvenile's property).

(z) He/His. The use of "he/his" means he or she, his or her, and singular includes plural.

(aa) "Incompetent person(s)" refers to a minor under the age of 18 who is not able to manage his/her daily affairs due to a mental deficiency or a physical disability.

(bb) "Indian" means a person who is a member of or is eligible for membership in a federally recognized Indian tribe, band or community, or Alaskan or Hawaiian Natives, or a person considered by the community to be Indian.

(cc) "Interim care" means emergency or temporary placement of a child in a shelter, home or juvenile shelter facility.

(dd) "Juvenile" means:

(1) An individual who is under 18 years of age.

(2) A person less than 18 years of age or older concerning whom proceedings are commenced in Juvenile Court prior to his or her eighteenth birthday.

(ee) "Juvenile offense" means an act committed by a juvenile, which if committed by an adult is designated an offense under the Tribe's Law and Order Code.

(ff) "Neglect" means the failure of the parent, guardian or custodian to provide adequate food, clothing, shelter, medical care, education or supervision for the child's health and well-being. "Neglect" shall include "abandoned" children.

(gg) "Open adoption" means an adoption which is intended not to permanently deprive the child of connections to, or knowledge of, his or her natural family.

(hh) "Parent" includes a natural or adoptive parent but does not include persons whose parental rights have been terminated nor does it include the putative or alleged father whose paternity has not been acknowledged or established.

(ii) "Petitioner" includes both petitioners under a joint petition.

(jj) "Presenting Officer" means the Presenting Officer or any other appropriately titled person who performs the duties and responsibilities set forth in section 6.020.

(kk) "Probation" means a legal status created by Court order whereby a "juvenile offender" is permitted to remain in his or her home under prescribed conditions and under the supervision of a person designated by the Court. A "juvenile offender" on probation is subject to return to Court for further proceedings in the event of his or her failure to comply with any of the prescribed conditions of probation.

(ll) "Putative father" means any man not deemed or adjudicated by a court of competent jurisdiction to be the father of genetic origin of a child who claims or is alleged to be the biological father of such child.

(mm) "Round Valley Indian child" means any unmarried person under the age of 18 years who is a member of the Round Valley Indian Tribes or who is eligible for membership.

(nn) "Round Valley Indian Child Welfare Act Committee" ("RVIT ICWAC") is a committee appointed by the Round Valley Tribal government to act as their "eyes and ears" in dependency matters to assure compliance with applicable mandates of the Indian Child Welfare Act, the Child and Family Protection Code, and the Round Valley Tribe's goal of maintaining the family unit and/or reunification of the same.

(oo) "Reservation" means the Round Valley Indian Reservation in Covelo, California.

(pp) "Secure juvenile detention facility" means a detention facility designated by the Court which restricts the movement and activity of the juvenile and in which he or she is kept both from sight and sound of adult detainees.

(qq) "Shelter care home" or "juvenile shelter care facility" means a home or residential facility which is licensed to care for children under the age of 18 years.

(rr) "Status offenses" means acts or conduct which if committed by an adult would not be considered an offense. Such "offenses" include but are not limited to:

(1) A child who, while subject to compulsory school attendance, is habitually absent from school.

(2) Curfew violations.

(3) Runaway.

(ss) "Tribal Council" means the Tribal Council of the Round Valley Indian Tribes.

(tt) "Tribal Court" means the court for the Round Valley Indian Tribes.

(uu) "Tribe" means the Round Valley Indian Tribes.

(vv) "Forensic Interviewer" is defined as a person who is professionally trained to interview child abuse victims and professionally trained to testify as an expert in a dependency proceeding.

Chapter 2 - Jurisdiction of the Tribal Court

2.010 - General jurisdiction

The Round Valley Indian Tribes Tribal Court, as established by the Round Valley Indian Tribes Tribal Court Code, is vested with personal, subject matter and territorial jurisdiction to the extent permitted under the Constitution and Laws of the Round Valley Indian Tribes and the United States of America and the Round Valley Indian Tribes Tribal Court Code. The jurisdiction of the Tribal Court under this Child and Family Protection Code shall be civil in nature and shall include the right to issue all orders necessary to ensure the safety of children and incompetents within the boundaries of the Reservation.

The Court shall have jurisdiction over the following persons:

(a) Persons under the age of 18 years who are enrolled members of the Round Valley Tribe or are eligible for enrollment in the Round Valley Tribe;

(b) Indians, as defined in Section 1.030, who are under the age of 18 years and who are residing or domiciled within the exterior boundaries of the Reservation;

(c) Children of enrolled members of the Round Valley Tribe or other Indians, as defined in Section 1.030, including adopted children, who reside or are domiciled within the exterior boundaries of the Reservation;

(d) Children residing or domiciled within the exterior boundaries of the Reservation, for whatever reason, in the home of an enrolled member of the Round Valley Tribe or other Indians, as defined in Section 1.030, as long as the parent(s), guardian(s), or custodian(s) have consented to the jurisdiction of the Court. Such consent, once given, may be revoked only with permission of the Tribal Court; and

(e) Incompetent persons who are enrolled members of the Round Valley Tribe or eligible for enrollment in the Round Valley Tribe, or are Indians as defined by Section 1.030, residing or domiciled within the exterior boundaries of the Reservation

2.020 - Jurisdiction over extended family.

Where the Tribal Court asserts jurisdiction over a person under Section 2.010, the Court shall also have jurisdiction over the person's extended family whenever that Court deems it appropriate.

2.030 - Continuing jurisdiction

Where the Tribal Court deems it appropriate, the Court may retain jurisdiction over children and their extended families who leave the exterior boundaries of the Reservation.

Chapter 3 - Transfer of Jurisdiction

3.010 - Application of the Indian Child Welfare Act

The Tribal Court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. 1901 through 1963, where they do not conflict with the provisions of this Code. The procedures for state courts in the Indian Child Welfare Act shall not be binding upon the Tribal Court unless specifically provided for in this Code.

3.020 - Transfer to state court or other tribal court

In any proceeding before the Tribal Court, the Court may transfer the proceedings to an appropriate state court or another tribal court where the state or another Indian tribe has a significant interest in the child and the transfer would be in the best interest of the child.

3.030 - Transfer from other courts

The Tribal Court may accept or decline, under the procedures set forth in this Code, transfers of child welfare cases from other federal, state or tribal courts.

3.040 - Procedures for transfer from state court

(a) Receipt of Notice. The Tribal agent for service of notice of state court child custody proceedings, as defined by the Indian Child Welfare Act, shall be the Tribe's Law Office.

(b) Investigation and Pre-transfer Report by the ICW Liaison. The Tribe's ICWA Liaison shall conduct an investigation and file a written report with the Court within 10 days of receipt of notice from the Tribal agent for service of notice.

(c) Recommendations for Transfer or Intervention. The Tribal Indian Child Welfare Department shall consult with the Tribal Attorney and make written recommendations to the Tribal Attorney on whether or not the Tribe should petition for transfer from or intervene in state court.

(d) Petition for Transfer. The Tribal petition for transfer shall be filed by the Tribal Attorney within 10 days of receipt of recommendations from the Tribe's Indian Child Welfare Department.

(e) Acceptance of Transfer. The Court will not accept a transfer from state court unless:

(1) A parent or Indian custodian's petition to state court for transfer is granted; or

(2) The Tribe's petition to state court for transfer is granted; and

(3) The Tribe's Indian Child Welfare Department's pre-transfer report recommends the acceptance of transfer; and

(4) The Tribal Attorney recommends acceptance.

(f) Hearing(s).

(1) Upon acceptance of a transfer from state court, the Court shall grant full faith and credit to the state court order that the child is dependent, in accordance with Section 3.060, and shall be a ward of the Court.

(2) Upon receipt of an order transferring jurisdiction from state court, the Presenting Officer shall file a motion to have the state court dispositional order adopted or modified. Subsequent hearing(s) shall be held in accordance with this Code.

3.050 - Intervention in state court proceedings

(a) The Tribe may intervene in state court child custody proceedings, as defined by the Indian Child Welfare Act, at any point in the proceedings; and

(b) The Tribal Attorney or selected representatives shall file a motion to intervene within 10 days of receipt of recommendations from the ICWA Liaison/RVITCS Director.

3.060 - Full faith and credit – Conflict of laws

(a) State Court Orders. State child custody orders involving children over whom the Tribal Court could take jurisdiction may be recognized by the Tribal Court only after a full independent review of such state proceedings has determined:

(1) The state court had jurisdiction over the child; and

(2) The provisions of the Indian Child Welfare Act, 25 U.S.C. 1901 through 1963, were properly followed; and

(3) Due process was provided to all interested persons participating in the state proceeding; and

(4) The state court proceeding did not violate the public policies, customs, or common law of the Tribe.

(b) Court Orders of Other Tribal Courts. Child custody orders of other tribal courts involving children over whom the Tribal Court could take jurisdiction shall be recognized by the Tribal Court after the Court has determined that:

(1) The other tribal court exercised proper subject matter and personal jurisdiction over the parties; and

(2) Due process was accorded to all interested parties participating in the other tribal court proceeding.

(c) Tribal Interest. Because of the vital interest of the Tribe in its children and those children who may become members of the Tribe, the statutes, regulations, public policies, customs and common law of the Tribe shall control in any proceeding involving a child who is a member of, or eligible for membership in, the Round Valley Tribe.

Chapter 4 - Procedures and Authorizations

4.010 - Rules of procedure

The procedures in the Tribal Court shall be governed by the rules of procedure for the Tribal Court which are not in conflict with this Code.

4.020 - Cooperation and grants

The Tribal Court is authorized to cooperate fully with any federal, state, Tribal, public or private agency in order to participate in any foster care, shelter care, treatment or training program(s) and to receive grants-in-aid to carry out the purposes of this Code. This authority is subject to the approval of the Tribal Council if it involves an expenditure of Tribal funds.

4.030 - Social services

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

4.040 - Contracts

The Tribal Council may negotiate contracts with Tribal, federal, state or private agencies and/or departments for the care and placement of children before the Tribal Court.

Chapter 5 - Round Valley Indian Child Welfare Act Committee

5.010 - Round Valley Indian Child Welfare Act Committee

The Round Valley Indian Child Welfare Act Committee ("RVICWAC") derives its authority, powers and duties from Resolution. In all stages of dependency proceedings, the Round Valley Tribal Court shall consider the recommendations of the RVICWAC through the submission of their written recommendations to the Round Valley Tribal Court.

(a) The RVICWAC shall meet on a monthly basis with the Round Valley Indian Child Welfare Department to review and consider the proposed plan for each dependent child, and the RVICWAC will make its own written recommendations in writing to the Court;

(b) The RVICWAC shall be comprised of seven members and two alternates. The RVIT ICWAC shall consist of: one Tribal daycare employee; one School employee;

three Round Valley Tribal Elders; one law enforcement employee; one Round Valley Tribal member at-large; and two alternates to be drawn from the above-listed categories of persons;

(c) The RVICWAC shall be appointed to staggered terms and shall elect from within a chairperson and vice-chairperson;

(d) The RVICWAC has the authority to call emergency meetings for new dependency filings scheduled for an initial hearing. Their recommendations shall be included at the initial hearing;

(e) The RVICWAC will make all of its recommendations to the Court, after staffing each child's case with the caseworker, and any other person necessary to make a determination. They shall apply the applicable mandates of the Indian Child Welfare Act ("ICWA"), and Round Valley Tribe's "Child and Family Protection Code" with a priority to reunify the family;

(f) If an emergency placement occurred under extreme and dire circumstances, before the RVICWAC could meet, the child must be placed in the preference order listed in Subchapter 20 of this chapter. After the RVIT ICWAC meets, the placement shall be subject to the RVICWAC's recommendations, which will also be filed in written form with the Round Valley Tribal Court; and

(g) The RVICWAC shall file a report to the Tribal Council every six months providing statistics of the outcomes of all children's cases, as well as the placements.

Chapter 6 - Tribal Court Personnel

6.010 - Tribal Court Counselor/Children's Services Caseworker

(a) Appointment. The Tribal Court Counselor(s) and Children's Services Caseworker(s) shall be appointed by the RVITCS Director or the Tribal Council. The RVITCS Director shall certify annually to the Tribal Council the number of qualified Counselors/Caseworkers needed to carry out the purpose of this Code. The person(s) carrying out the duties and responsibilities set forth in this section may be labeled "Tribal Court Counselor(s)" or "Children's Services Caseworker" or any other title which the Court finds appropriate, so long as they perform the duties and responsibilities set forth in this section.

(b) Qualifications. The Tribal Court Counselor(s)/Caseworker(s) must have an educational background and/or prior experience in the field of delivering social services to children.

(c) Resource Development. The Tribal Court Counselor(s)/Caseworker(s) shall identify and develop resources on the Round Valley Indian Reservation, in conjunction with state, federal and city jurisdictions, the Tribal Court and the Tribal Council, to enhance each child's potential as a viable member of the Tribal community.

(d) Duties. The duties of the Tribal Court Counselor(s)/Caseworker(s) include the following:

(1) Conduct investigations as provided in this Code or as directed by the Court;

(2) Produce reports to the Court as provided in this Code or as directed by the Tribal Court;

(3) Make appropriate arrangements for counseling services as may be necessary or as directed by the Tribal Court; and

(4) Perform such other duties in connection with the care, custody or transportation of children as the Court may require.

(e) Prohibited Duties. The Tribal Court Counselor(s)/Caseworker(s) shall not be employed as, or be required to perform the duties of, a prosecutor, Child Welfare Presenter or Law Enforcement official while acting in the capacity of Tribal Court Counselor/Caseworker.

6.020 - Child Welfare Presenter

(a) Appointment. The Tribal Council shall appoint a Child Welfare Presenter(s) to carry out the duties and responsibilities set forth in this Code. The Chief Judge of the Tribal Court shall certify annually to the Tribal Council the number of qualified Child Welfare Presenters needed to carry out the purpose of this Code. The person(s) carrying out the duties and responsibilities set forth in this section may be labeled "Child Welfare Presenting Officer" or "Child Welfare Petitioner" or any other title which the Court finds appropriate so long as they perform the duties and responsibilities set forth in this section.

(b) Qualifications. The qualifications of the Child Welfare Presenter(s) shall be the same as the qualifications for licensed attorneys as specified the Round Valley Tribal Court Code.

(c) Duties. The duties of the Child Welfare Presenter include the following:

- (1) File petitions with the Court as provided in this Code;
- (2) Represent the Tribe in all proceedings under this Code; and
- (3) Perform such other duties as the Court may order.

6.030 - Guardian ad litem

At any stage of the proceedings conducted under this Code the Tribal Court may appoint a guardian ad litem for the child, without affecting the right to counsel of the parent(s), guardian(s) or other legal custodian(s), to act as a representative for the child's best interests.

Chapter 7 - Indian Child Welfare Workers

7.010 - Power and duties.

(a) Indian Child Welfare Workers shall be employed by the Tribe's Indian Child Welfare Department.

(b) The Indian Child Welfare Department may cooperate with such state and community agencies as are necessary to achieve the purposes of this Code, and may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification by the Tribal Council or its designate.

(c) A Indian Child Welfare Worker shall:

(1) Receive reports of neglected, abused or abandoned children and be prepared to provide temporary foster care for such children on a 24-hour basis;

(2) Receive from any source, oral or written, information regarding a child who may be in need of protective services;

(3) Upon receipt of any report or information under subsection (c)(1) or (2) of this section, immediately:

(A) Notify the appropriate Law Enforcement agency; and

(B) Make a prompt and thorough investigation which shall include a determination of the nature, extent, and cause of any condition which is contrary to the child's best interests and the name, age, and condition of other children in the home;

(4) Take a child into temporary custody by a Law Enforcement Officer or emergency pickup order/shelter care order if there are reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his surroundings and that his removal is necessary. Law Enforcement officials shall cooperate with social services personnel to remove a child from the custody of his parent(s), guardian, or custodian when necessary;

(5) After investigation, evaluate and assess the home environment of the child or children in the same home and the risk to such children if they continue to be subjected to the existing home environment, and all other facts or matters found to be pertinent. They shall determine whether any of such children is a child in need of protective services;

(6) Offer to the family of any child found to be a child in need of protective services appropriate services which may include, but shall not be restricted to, protective services;

(7) Within 30 days after a referral of a potential child in need of protective services, submit a written report of his or her investigation and evaluation to the Tribal Court;

(8) No child shall remain in an out-of-home temporary placement for a period exceeding 72 hours, excluding Saturdays, Sundays and holidays, unless a child/family protection petition is filed.

7.020 - Limitations of authority – Duty to inform

(a) Before offering protective services to a family, a Protective Service Worker shall inform the family that he or she has no legal authority to compel the family to receive such services and that the Worker has the authority to sign an acceptance or service contract or to initiate a petition in the Tribal Court.

(b) If the family declines the offered services, the Worker may initiate a child/family protection petition in Tribal Court alleging a child in need of protective services if the Worker believes it is in the child's best interest. The Worker should have such a family sign a written notice declining offered services.

Chapter 8 - Duty to Report Child Abuse and Neglect

8.010 - Duty to report

Any person who has a reasonable cause to suspect that a child has been abused, neglected or abandoned shall immediately report the abuse, neglect or abandonment to the Tribal Indian Child Welfare Department and/or Tribal Law Enforcement Department/Children's Protective Services.

8.020 - Persons specifically required to report

Those persons who are mandated to report suspected abuse or neglect include any physician, nurse, dentist, optometrist, or any other 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 including foster parents, residential care or institutional personnel; counselor; peace officer or other Law Enforcement official; Judge, Court Counselor, Clerk of the Court, or other judicial system official. Attorneys also have a duty to report suspected abuse or neglect, but only when doing so does not violate the attorney-client privilege.

8.030 - Anonymous reports

Any person who has a reasonable cause to suspect that a child has been abused, neglected or abandoned shall report the abuse, neglect or abandonment. Those persons reporting, except those specified in Section 8.020, may remain anonymous.

8.040 - Immunity from liability

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.

8.050 - Penalty for not reporting

Those persons mandated to report a case of known or suspected abuse or neglect who knowingly fail to do so or willfully prevent someone else from doing so shall, after adequate notice and hearing, be subject to a fine of not more than \$5,000.

8.060 - Abuse and neglect reports

(a) Form of Report. Those persons mandated to report under Section 8.020 shall promptly make an oral report to the Tribal Social Services/Children's Protective Services Department and then follow with a written report as soon thereafter as possible.

(b) Contents of Written Report. The following information shall be included in the written report:

- (1) Names, addresses, and tribal affiliation of the child and his parent(s), guardian, or custodian;
- (2) The child's age;
- (3) The nature and content of the child's abuse or neglect;
- (4) Previous CPS referrals and outcomes of abuse or neglect of the child or his siblings, if known;
- (5) The name, age, and address of the person alleged to be responsible for the child's abuse or neglect, if known;
- (6) The name and address of the person or agency making the report.

(c) Photographs and/or X-Rays of Visible Trauma. Persons reporting suspected abuse or neglect may photograph and/or cause x-rays to be taken of the child suspected of abuse, and such photographs and/or x-rays may be introduced into evidence at a hearing.

8.070 - Central registry

The Department of Social Services and/or the Law Enforcement Department shall maintain a central registry of reports, investigations and evaluations made under this Code. The registry shall contain the information furnished by Tribal personnel throughout the Reservation, including Protective Service Workers, Probation Officers, caseworkers and Indian Child Welfare Program employees. Data shall be kept in the central registry until the child concerned reaches the age of 18 years (unless the Tribal Court orders that individual records shall be kept on file beyond that date in order to protect other siblings). Data and information in the central registry shall be confidential and shall be made available only with the approval of the Director of the Department to the Tribal Court, Social Service agencies, Public Health and Law Enforcement agencies, licensed health practitioners, and health and educational institutions licensed or regulated by the Tribe. A request for the release of information must be submitted in writing, and such request and its approval shall be made part of the child's file.

Chapter 9 - Investigation and Removal**9.010 - Investigation**

The child abuse or neglect report shall be investigated within one Court working day by the Social Services Department or other appropriate agency, unless the Tribal Court directs otherwise.

9.020 - Informal resolution

(a) After the investigation, the Indian Child Welfare Worker may invite the child's parent(s), guardian, or custodian to discuss alternatives to filing a petition.

(b) The Indian Child Welfare Worker shall set forth in writing the facts agreed upon by the parties and the disposition agreed to by the parties for remedying the situation in which the child is found.

(c) Should the Indian Child Welfare Worker conclude that positive results are not being achieved, he or she may recommend to the Presenting Officer that a petition be filed.

9.030 - Authority to remove

If the person investigating a report of child abuse or neglect finds that the grounds for removal, listed in Section 9.040, have been met, such person may, with the assistance of Law Enforcement or a Court order, 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.

9.040 - Grounds for emergency removal

No child shall be removed from the home of the child's parent(s), guardian or custodian without the consent of the parent(s), guardian or custodian absent a specific order of the Tribal Court, except as follows:

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

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

9.050 - Power to remove

Any person shall have the power to remove a child pursuant to this section; provided, that:

(a) Reasonable grounds existed at the time of the removal to believe the removal was necessary; and

(b) The person removing the child ensures the safety and well-being of the child, until such time as the Tribal Court assumes control of the matter; and

(c) The person removing the child complies with the notice provisions contained in Section 10.010.

Chapter 10 - Notice of Removal

10.010 - Notice to the Indian Child Welfare Worker

After a child is removed from his or her home, the person who removed the child shall attempt to contact the Indian Child Welfare Worker within six hours. The attempt to contact the Indian Child Welfare Worker shall be documented. Actual notice to the Court shall be made, by the removing person, no later than 12:00 p.m. (noon) the next Court working day.

10.020 - Notice to the parent, guardian or custodian

The Indian Child Welfare Worker shall make all reasonable efforts to notify the parent(s), guardian or custodian, within 12 hours of the Worker knowing that the child was removed. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment, or other location where the parent(s), guardian or custodian is known to frequent with regularity. If the parent(s), guardian or custodian cannot be found, notice shall be given to members of the extended family of the parent(s), guardian or custodian and/or the extended family of the child.

Chapter 11 - Restrictions on Placement of Children

11.010 - Placement preferences

Placement preferences must be strictly adhered to, and are outlined in chapter 20 of this code.

Chapter 12 - Filing Child/Family Protection Petition

12.010 - Authorization to file petition

Formal child/family protection proceedings shall be instituted by a child/family protection petition filed by the Child Welfare Presenter on behalf of the Tribe and in the best interests of the child.

12.020 - Time limitations

(a) If a child has been removed from the home, then a child/family protection petition shall be filed with the Tribal Court no later than 72 hours, excluding Saturday, Sunday and holidays, following the removal.

(b) If a child has not been removed from the home, then either a child/family protection petition shall be filed with the Tribal Court no later than 10 days after the complaint was filed with the Indian Child Welfare Worker or Law Enforcement, or the informal resolution procedure is begun in accordance with Section 9.020.

12.030 - Contents of petition

The child/family protection petition shall set forth the following with specificity:

- (a) The name, birth date, sex, residence and tribal affiliation of the child;
- (b) The basis for the Court's jurisdiction;
- (c) The specific allegations of abuse, neglect or abandonment;
- (d) A plain and concise statement of the facts upon which the allegations of abuse, neglect or abandonment are based, including the date, time and location at which the alleged facts occurred;
- (e) The names, residences and tribal affiliation of the child's parents, guardians or custodians, if known;
- (f) The names, relationship and residences of all known members of the child's extended family and all former caregivers, if known; and
- (g) If the child is placed outside of the home, where the child is placed, the facts necessitating the placement and the date and time of the placement.

Chapter 13 - Initial Hearing**13.010 - Hearing date**

An initial hearing shall be held regarding the removal of a child within 72 hours, excluding Saturdays, Sundays and holidays, of filing of the child/family protection petition.

13.020 - Purpose

The purpose of the initial hearing is to determine whether it is reasonable to believe that continuing absence from the home is necessary to protect the well-being of the child.

13.030 - Advise of rights

During the hearing, the Court shall advise all parties of the reason for the hearing and of their basic rights as provided for in Section 14.010.

13.040 - Nature of hearing

The hearing shall be informal in nature. Concerned parties may present evidence relating to the situation. At the Court's discretion, hearsay evidence may be admissible. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's extended family and other persons determined to be appropriate by the Court shall be admitted.

13.050 - Possible outcomes of the initial hearing

Upon completion of the initial hearing, the Court may decide to take one of the following actions:

- (a) Dismiss the child/family protection petition and return the child to the home;
- (b) Return the child to the home of the parent(s), guardian or custodian under the supervision of the Court and hold a formal hearing within 90 days;
- (c) Continue the child in out-of-home placement and hold a hearing in 90 days;
- (d) Make any other order deemed appropriate or necessary by the Court.

13.060 - Notice of initial hearing

The Court shall make all reasonable efforts to advise the parent(s), guardian or custodian of the time and place of the initial hearing. The Court shall request that the parent(s), guardian or custodian be present for the hearing. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment or other location where the person is known to frequent with regularity. If the Court is unable to contact the parent(s), guardian or custodian, notice shall be given to members of the extended family of the parent(s), guardian or custodian and/or the extended family of the child.

13.070 - Unresolved issues

If the problems are not resolved at the initial hearing, the Court will set a date for a formal hearing on the issues. Such date will be no later than 90 days after the filing of the child/family protection petition.

Chapter 14 - Notification of Rights**14.010 - Notification of rights**

All parties have a right to be represented by an advocate or attorney at their own expense in all proceedings under this Code, to introduce evidence, to be heard on his or her own behalf, to examine witnesses, and to be informed of possible consequences if the allegations of the petition are found to be true. All parties shall be entitled to advance copies of Court documents, including petitions and reports, unless deemed inappropriate by the Court.

Chapter 15 - Formal Adjudicatory Hearing**15.010 - Time limitation**

The formal adjudicatory hearing on the issues will be set for no later than 90 days following the filing of the child/family protection petition.

15.020 - Admissibility

The records of the initial hearing shall not be admissible at the formal adjudicatory hearing. This shall not be construed to prevent the admissibility of any evidence that was presented at these hearings which would normally be admissible under the Court's rules of evidence.

15.030 - Closed hearing

The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's extended family, and other persons determined to be appropriate by the Court shall be admitted.

15.040 - Advise of rights

During the hearing, the Court shall advise all parties of the reason for the hearing and of their basic rights as provided for in Section 14.010.

15.050 - Child witnesses

If the Court determines that it is in the best interests of the child and does not violate the rights of a party, the Court may allow a child to testify. Children will only be called to testify if their testimony and evidence is critical to the determination of a dependency, and may only be solicited using the process outlined below:

- (a) The child must be 11 years of age or older;
- (b) The child must testify by means of a video-taped deposition, closed-circuit television or other similar, appropriate method; and
- (c) At the hearings, the only persons allowed to be present are the:
 - (1) Judge;
 - (2) Presenting Officer;
 - (3) Defense Counsel;
 - (4) Parent(s)/guardian(s);
 - (5) Forensic Interviewer if necessary to interview the child, in order to reduce trauma to the child, and to bring forth evidentiary testimony in the case; and
 - (6) Court Reporter, if necessary.

Examination of the child will be allowed by the Judge, Presenting Officer, Defense Counsel, and/or parent(s)/guardian(s) after the interview by the Forensic Interviewer. Examination must be done in a nonadversarial manner that gives consideration to the child's age and reduces potential trauma.

15.060 - Child hearsay exception

Children under the age of 11 cannot testify in open court in dependency proceedings. A statement made by a child (including a video-tape of the child, utilizing a Forensic Interviewer), that describes any form of neglect or abuse, including abuse that is either sexual or physical, is admissible in evidence in dependency proceedings if:

- (a) There is corroborative evidence of the allegations, which includes, but is not limited to:
 - (1) Medical reports showing that abuse occurred;
 - (2) Adult testimonial evidence, including observations of investigators;
 - (3) Physical evidence; or
 - (4) Any other evidence that corroborates that abuse occurred or did not occur.

The Judge may look at the weight of the evidence, taking this hearsay exception into account, while looking at other reliable corroborative evidence in light of this rule.

15.070 - In-camera interview

Children under the age of 18 can go with the Court Clerk into the Judge's chambers if the Judge needs to ask the child an important question off-record regarding the dependency. These interviews will not be recorded. In-camera interviews will assist the Judge when making important decisions. The Judge has full discretion to consider the probative value of the child's statements, along with other corroborative evidence, before making a final decision regarding whether to establish a dependency.

15.080 - Burden of proof

The burden of proof lies with the petitioner. The petitioner must prove that the allegations raised in the child/family protection petition are more likely true than not, that is, by the preponderance of the evidence, and that the best interests of the child will be served by continued Court intervention.

15.090 - Outcome of hearing

The Court will either find the allegations of the child/family protection petition to be true or dismiss the child/family protection petition, unless the hearing shall be continued to a date certain to allow for the presentation of further evidence.

15.100 - Return to home

The Court may find the allegations of the child/family protection petition to be true, but that out-of-home placement is not needed to protect the child. The Court may, however, due to unresolved problems in the home, continue Court intervention and supervision as appropriate.

15.110 - Grounds for continuing removal from the home

The Court may find the allegations of the child/family protection petition to be true and order that the child remain out of the home. The grounds for continuing removal from the home of a parent, guardian or custodian are that:

- (a) A child has no parent, guardian or custodian available, willing and capable to care for the child.
- (b) The child has suffered, or is likely to suffer, a physical injury inflicted upon him by other than accidental means, which causes or creates a substantial risk of death, disfigurement or impairment of bodily functions.
- (c) The child has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his or her parent(s), guardian or custodian, which is necessary for the child's health and well-being.
- (d) The child has been sexually abused or sexually exploited.
- (e) The child has committed juvenile offenses as a result of parental pressure, guidance or approval.
- (f) The child has been emotionally abused or neglected.
- (g) The child has suffered, or is likely to suffer, emotional damage which causes or creates a substantial risk of impaired development.

15.120 - Court order for continuing removal

The Court shall specify in its order the necessary intervention and appropriate steps, if any, the parent(s), guardian or custodian must follow to correct the underlying problem(s).

15.130 - Return of child to parent, guardian or custodian

The Court may find the allegations of the child/family protection petition to be true and out-of-home placement necessary, but with the accomplishment of specified actions by the parent(s), guardian or custodian, the child may be returned absent good cause to the contrary. The order of the Court will specify actions, and the time frames for such actions, that parents, guardians, or custodians must accomplish before the child is returned. The order will also specify the responsibilities of any support agency or personnel to be involved.

15.140 - Out-of-home placement

The Court may find the allegations of the child/family protection petition to be true and that out-of-home placement continues to be necessary and further that the child may not be returned to the home, absent specific order of the Court. The Court shall specify what steps the parents shall take to demonstrate their abilities to care for their child, and specify to the parties what factors the Court will consider at a subsequent hearing to determine whether or not the child should be returned.

15.150 - Written order

The Court shall specify in writing the facts, grounds, and code sections upon which it relied to make its decisions.

Chapter 16 - Notice of Formal Adjudicatory Hearing**16.010 - Summons**

The Court shall issue a summons to the parent(s), guardian or custodian and such other persons as appear to the Court to be proper or necessary parties to the proceedings. The summons shall require them to appear personally before the Court at the time set for the formal adjudicatory hearing.

16.020 - Attachments to summons

A copy of the child/family protection petition shall be attached to each summons. The Court shall also attach a notice to the parent(s), guardian or custodian which advises them of their rights under Section 14.010.

16.030 - Personal service

If the parties to be served with a summons can be found within the exterior boundaries of the Reservation, the summons, a copy of the child/family protection petition and the notice of rights shall be personally served upon them at least 10 Court days before the formal adjudicatory hearing.

16.040 - Mail service

(a) If the parties are within the exterior boundaries of the Reservation but cannot be personally served, and if their address is known, the summons, petition and notice of rights may be served by registered mail, return receipt requested, at least 10 days before the formal adjudicatory hearing.

(b) If the parties are outside the exterior boundaries of the Reservation and if their address is known, the summons, petition and notice of rights may be served by registered mail, return receipt requested, at least 10 days before the formal adjudicatory hearing.

16.050 - Notice to extended family

If the Court cannot accomplish personal or mail service, the Court shall attempt to notify the parent(s), guardian or custodian by contacting members of the extended family of the parent(s), guardian, custodian, and/or the extended family of the child.

16.060 - Service of summons

Service of summons may be made by any person 18 years of age or older who is not a party to the proceedings.

16.070 - Publication

In a child/family protection case where it appears within the body of the petition or within an accompanying statement that the parent(s), guardian or custodian is a nonresident of the Reservation, and that their name, place of residence or whereabouts is unknown, and where personal service or service by registered mail has been unable to be effected, the Court may direct the Clerk to publish legal notice in a newspaper. Such newspaper must be distributed within Pierce County or on the Reservation and such notice must be published once a week for three consecutive weeks, with the first publication of the notice at least 21 days prior to the date fixed for the hearing. Such notice shall be directed to the parent(s), guardian or custodian if their names are known, or if unknown, the phrase "To whom it may concern," may be used and applied to and be binding upon any such person whose names are unknown. The name of the Court, name of the child, the date of the filing of the petition, the date of the hearing, and the object of the proceeding in general terms shall be set forth. There shall be filed with the Clerk an affidavit showing publication of the notice. The publication of such notice shall be paid by the Tribe and shall be deemed equivalent to personal service upon all persons known or unknown who have been designated as provided in this section.

16.080 - Warning

The summons issued by the Court shall conspicuously display the words:

NOTICE, PURSUANT TO TRIBAL CODE Section 17.020, THE COURT MAY FIND THE PARENT, GUARDIAN OR CUSTODIAN IN DEFAULT FOR FAILURE TO RESPOND OR APPEAR AT A COURT HEARING. THIS MAY RESULT IN YOUR CHILD(REN) BEING PLACED IN ANOTHER HOME AND THE PARENT ORDERED TO CORRECT CERTAIN PROBLEMS.

Chapter 17 - Default Judgment

17.010 - When appropriate

If the parent(s), guardian or custodian fails to respond or appear for the formal adjudicatory hearing, the Court may find the parent(s), guardian or custodian in default, and enter a default order of child/family protection and order necessary intervention and appropriate steps the parent(s), guardian or custodian must follow to correct the underlying problem(s).

17.020 - Notice determination

Prior to finding a parent, guardian, or custodian in default, the Court must be satisfied that actual notice has been given or that all reasonable possible steps have been taken to provide notice of the formal adjudicatory hearing to the parent(s), guardian, or custodian. The Court must also find that the petitioner can prove the elements of the child/family protection petition.

17.030 - Written order

If the parent(s), guardian or custodian is found in default, the Court shall specify in a written order the facts, grounds, and code sections upon which it relied to make the decision.

Chapter 18 - Six-Month Review

18.010 - Review requirement

The status of all children subject to the Child and Family Protection Code shall be reviewed by the Court at least every six months at a hearing to determine whether Court supervision shall continue, except that the first review following a formal adjudicatory hearing shall be held within 90 days.

18.020 - Return to home

A child shall be returned home at the review hearing unless the Court finds that a reason for removal as set forth in Section 15.110 still exists. The Court may, however, due to unresolved problems in the home, continue Court intervention and supervision as appropriate.

18.030 - Written order

If continued Court intervention is determined to be necessary, the Court shall set forth the following in a written order:

- (a) What services have been provided or offered to the parent(s), guardian or custodian, to help correct the underlying problem(s);
- (b) The extent to which the parent(s), guardian, or custodian has visited or contacted the child, any reason why such visitation and/or contact has been infrequent or has not otherwise occurred;
- (c) Whether the parent(s), guardian or custodian is cooperative with the Court;
- (d) Whether additional services should be offered to the parent(s), guardian or custodian;

(e) The extent to which the parent(s), guardian or custodian has participated in Court-ordered programs and whether the parent(s), guardian or custodian should be required to participate in any additional programs to help correct the underlying problem(s);

(f) When the return of the child can be expected.

18.040 - Additional steps

The Court at the review hearing may order that a petition to terminate the parent/child relationship be filed, or that a guardianship petition be filed.

Chapter 19 - Social Service Report

19.010 - Requirement of a social service report

To aid the Court in its decision, a social service report consisting of a written evaluation of matters relevant to the disposition of the case and subsequent review hearings shall be prepared by the assigned caseworker, the Tribal Court Counselor or other appropriate person or agency that has been directed by the Tribal Court to provide social services to the child and his or her family.

19.020 - Contents of a social service report

The social service report shall include the following points, and be made available to the Court and the parties, as deemed appropriate by the Court, seven Court days prior to a child/family protection review hearing:

- (a) A summary of the problem(s);
- (b) What steps, if any, have the parent(s), guardian, custodian, or social services personnel already taken to correct the problem(s);
- (c) What services could be of benefit to the parent(s), guardian or custodian, but are not available in the community;
- (d) A report on how the child is doing in his or her current placement(s) since the last hearing. If there have been any moves, the report will contain the reason for such moves;
- (e) Dates of contacts with parent(s), guardian or custodian and the child since the first hearing was held, method of contact, duration and subjects discussed;
- (f) If there have been no contacts with the parent(s), guardian, custodian or social worker, what efforts have been made to contact such parties;
- (g) An assessment of when the child is expected to return home;
- (h) A list of who the extended family members are and a list of contacts, or attempted contacts, of such family members regarding placement of the child;
- (i) The social services personnel shall develop a case plan and shall make recommendations that include, but are not limited to:
 - (1) A treatment plan for the parents;
 - (2) Future placement of the child;
 - (3) What services should be provided for the child, if services are needed.

Chapter 20 - Placement Preferences for Emergency Removals and Post-Adjudicatory Dependency Proceedings

20.010 - Least restrictive setting

If a child cannot be returned to the family home, the child shall be placed in the least restrictive setting which most approximates a family and in which his/her special needs, if any, may be met. The child shall also be placed within reasonable proximity to his home, taking into account any special needs of the child.

20.020 - Placement preferences

(a) The placement of Round Valley children in homes other than with their biological parents will be done with strict adherence to the following preferences:

- (1) Members of the child's extended family;
- (2) An Indian family of the same tribe as the child; or
- (3) An Indian family of another tribe.

(b) A recommendation from the RVIT ICWAC on behalf of a Round Valley child is required for placement in any of the following:

- (4) A licensed foster care home;
- (5) A licensed facility operated by a licensed child welfare services agency; or
- (6) A detention facility if all other placements are not possible (used only as a last resort).

20.030 - Pre-initial hearing placements

In making an emergency placement, the caseworker shall consider the best interests of the child. The RVIT ICWAC shall provide a written report approving or denying the emergency placement and shall file its report with the caseworker, whose responsibility it is to file it with the Round Valley Tribal Court. If an emergency placement shall occur before the RVIT ICWAC has met, the child shall be placed in the preference order listed (with no. 1 being the highest) in Section 20.020. As soon as the RVIT ICWAC meets, it shall file a report either approving the placement or recommending an alternative. The caseworker shall immediately file the written report with the Round Valley Tribal Court.

20.040 - Post-adjudicatory dependency placements

The Round Valley Tribal Court shall consider the best interests of the child. In establishing a dependency, the Court shall:

- (a) Look at what is in the child's best interests;
- (b) Take into consideration the recommendations of the RVIT ICWAC; and
- (c) Diligently follow the placement preferences listed in Section 20.020.

Chapter 21 - Medical Treatment

20.050 - Authorization of medical treatment

(a) At any time, whether or not a child is under the authority of the Court, the Court may authorize medical or surgical care for a child when:

- (1) A parent, legal guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case; or

(2) A physician informs the Court orally or in writing that, in his professional opinion, the life of the child would be greatly endangered without certain treatment and the parent, guardian or other custodian refuses or fails to consent. If time allows in a situation of this type, the Court shall cause every effort to be made to grant the parent(s), guardian, or custodian an immediate informal hearing, but this hearing shall not be allowed to further jeopardize the child's life.

(b) In making its order the Court shall give due consideration to any treatment being given the child by prayer through spiritual means alone or through other methods approved by Tribal customs or traditions or religions, if the child or his parent(s), guardian or legal custodian are adherents of a bona fide religious denomination that relies exclusively on this form of treatment in lieu of medical treatment, or practices in fact the Tribal customs or traditions or religion upon which is relied for such treatment of the child.

(c) After entering any authorization under this section, the Court shall reduce the circumstances, finding and authorization in writing and enter it in the records of the Court and shall cause a copy of the authorization to be given to the physician or hospital, or both, that was involved.

(d) Oral authorization by the Court is sufficient for care or treatment to be given and shall be accepted by any physician or hospital. No physician or hospital nor any nurse, technician or other person under the direction of such physician or hospital shall be subject to criminal or civil liability in the Court for performance of care or treatment in reliance on the Court's authorization, and any function performed thereunder shall be regarded as if it were performed with the child's and the parent's authorization.

Chapter 22 - Termination of Parental Rights

22.010 - Purpose

The purpose of this subchapter is to provide for the voluntary and involuntary termination of the parent-child relationship and for the substitution of parental care and supervision by judicial process. This subchapter shall be construed in a manner consistent with the philosophy that all parties shall be secure in their rights as enumerated in the Indian Civil Rights Act of 1968, 25 U.S.C. 1301 through 1341, and that the family unit is of most value to the community and the individual family members when that unit remains united and together, and that termination of the parent-child relationship is of such vital importance that it should be used only as a last resort when, in the opinion of the Court, all efforts have failed to avoid termination and it is in the best interests of the child concerned to proceed under this chapter.

22.020 - Grounds for involuntary termination

(a) Abandonment. If the parent has not contacted the child by telephone, letter or in person, or provided any financial support for more than one year without a break, or have had only marginal contacts for 24 out of the latest 48 months, a presumption shall exist that there is no parental relationship existing. The burden shall then be upon the parent to prove that such a relationship does exist. The evidence necessary to rebut this presumption may include, but shall not be limited to, information about efforts to

maintain the parent-child relationship, including a showing of regular visits, telephone calls, letters, other contacts, or monetary support.

- (b) Physical Injuries. Willful and repeated physical injuries.
- (c) Sexual Abuse. Willful and repeated acts of sexual abuse or sexual exploitation.
- (d) Emotional Harm. The return of the child may result in serious permanent emotional damage as supported by the best evidence available in the field of child development.

22.030 – Pre-filing requirements

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

- (a) The child has been found to be an abandoned or neglected child under the Code for at least a one-year period of time, and has been removed from their parent at the time of this termination hearing for a period of one year or more;
- (b) The Court has entered an order which states what the parent was required to correct their underlying problem(s);
- (c) The social service agency involved has made a good faith attempt to offer or provide all Court-ordered and/or necessary services that are reasonably available in the community and which are capable of helping the parent resolve his or her underlying problem(s);
- (d) There is little likelihood the conditions will be remedied so that the child can be returned to the parent(s) in the near future;
- (e) Continuation of the 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 their parent is the least detrimental alternative that can be taken.

22.040 - Who may file termination petition

- (a) A petition may be filed by:
 - (1) Either parent when termination is sought with respect to the other parent;
 - (2) The juvenile presenter;
 - (3) Any other person possessing a legitimate interest in the matter.
- (b) A parent may file a petition for the voluntary termination of his parental rights.
- (c) No parental rights may be terminated unless a petition has first been filed, notice has been given, and a hearing held in accordance with the provisions of this chapter.

22.050 - Contents of termination petition

The petition for termination of parental rights shall include the following to the best information and belief of the petitioner:

- (a) The name, place of residence and tribal affiliation of the petitioner (if other than Child Welfare Presenter);
- (b) The full name, sex, date and place of birth, residence and tribal affiliation of the child;
- (c) The basis for the Court's jurisdiction;

- (d) The relationship of the petitioner to the child, or the fact that no relationship exists;
 - (e) The names, addresses, tribal affiliation, and dates of birth of the child's parents;
 - (f) Where the child's parent is himself or herself a child, the names and addresses of the parent's parents or guardian; and where the parent has no parent or guardian, the members of the parent's extended family;
 - (g) The name and address of the person or agency having legal or temporary custody of the child;
 - (h) The grounds on which the termination is sought under Section 22.020 (unless voluntary termination);
 - (i) A statement that the prefiling requirements set forth in Section 22.030 have been met (unless voluntary termination); and
 - (j) A list of the assets of the child together with a statement of the value thereof.
- When any of the facts required by this section are unknown, the petition shall so state. The petitioner shall sign and date the petition.

22.060 - Notice

- (a) After a petition for the involuntary termination of parental rights has been filed, the Court shall set the time and place for hearing. Notice shall be given to the petitioner, the parents of the child, the guardian ad litem, the person having legal custody of the child, and the child's extended family as determined by the Court.
- (b) Where the child's parent is himself or herself a child, notice shall also be given to the parent's parents or guardian unless the Court is satisfied, in exercise of its discretion, that said notice is not in the best interest of the parent and that it would serve no useful purpose.
- (c) Notice shall be given by personal service. If service cannot be made personally, the Court may authorize service by registered mail, return receipt requested, at the last known address of the person to be served. If notice cannot be served by registered mail, the Court may authorize service by publication in either the Tribal Newspaper of the Reservation, 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 10 days prior to the date set for the hearing. No hearing can be held sooner than 10 days after the last publication where service by publication is made.
- (d) Notice and appearance may be waived by a parent in writing before the Court in the presence of, and witnessed by, a Clerk of the Court; provided, that such parent has been informed by the Court of the meaning and consequences of the termination action. The parent who has executed such a waiver shall not be required to appear at the hearing. Where the parent is a minor, the waiver shall be effective only upon approval of the Court.

22.070 – Pre-termination report

- (a) Upon the filing of a petition under this chapter for an involuntary termination of parental rights, the Court shall request that the Social Services Department or other qualified agency prepare and submit to the Court a report in writing. The report shall be

submitted to the Court no later than 10 days before the hearing with copies given to the parents. The purpose of the report is to aid the Court in making a determination on the petition and shall be considered by the Court prior thereto. The Court may request additional reports where it deems necessary.

(b) 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-child relationship, and the report submitted shall include a recommendation and the reasons therefor as to whether or not the parent-child relationship should be terminated.

22.080 - Voluntary termination of parental rights

Parental rights may be voluntarily terminated (relinquished) by a parent in writing, if signed by the parent in the presence and with the approval of the Court. Relinquishment shall not be accepted or acknowledged by the Court prior to 10 days after birth of the child. The Court shall ensure that the parent understands the consequences of the voluntary termination prior to approving it.

22.090 - Hearing procedures

The procedures for termination of parental rights hearings shall be conducted in accordance with Section 15.020 through 15.050.

22.100 - Burden of proof

The burden of proof lies with the petitioner to prove that the allegations in the termination petition are supported by clear, cogent and convincing evidence, and that the best interests of the child will be served by termination of parental rights.

22.110 - Findings of fact and conclusions of law

The Court will make formal findings of fact and conclusions of law as a basis for the written order terminating the parent-child relationship.

22.120 - Result of termination order

Upon the termination 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 be severed and terminated unless otherwise directed by the Court. The parent shall have no standing to appear at any future legal proceeding concerning the child. Any support obligation existing prior to the effective date of the order terminating parental rights shall not automatically be severed or terminated. The rights of one parent may be terminated without affecting the rights of the other parent. A termination order shall prevent a child from inheriting property or interest in the property of a natural parent, as well as preventing a natural parent from inheriting from a natural child.

22.130 - Child's continued right to benefits and enrollment

(a) An order terminating 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.

(b) An order terminating the parent-child relationship shall not affect the child's enrollment status as a member of any tribe or the child's degree of blood quantum of any tribe.

22.140 - Custody after termination order

If upon entering an order terminating the parental rights of a parent there remains no parent having parental rights, the Court shall commit the child to the custody of a social services agency for the purpose of placing the child for adoption, or in the absence of an adoptive home the agency may place the child in a licensed foster home or with a relative, or take other suitable measures for the care and welfare of the child.

22.150 - Future review hearings

If a child has not been adopted or permanently placed within six months of the termination order, another six-month review hearing will be held. Such six-month hearings will continue until the child is adopted or permanently placed.

Chapter 23 - Adoptions

23.010 - Open adoptions

Unless otherwise ordered by the Court, upon the showing of good cause or best interest of the child, adoptions under this Code shall be in the nature of "open adoptions." The purpose of such open adoptions is not to permanently deprive the child of connections to, or knowledge of, the child's natural 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:

(a) The adoptive parents and 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;

(b) The adoptive child may, upon reaching the age of 18, absent a convincing and compelling reason to the contrary, have access to the Tribal Court's records and information about his or her natural family and tribal heritage;

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

(d) Adoption shall prevent an adoptive child from inheriting from a natural parent. The natural parents shall not be entitled to inherit from an adoptive 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.

23.020 - Consent to adoption

(a) Written consent to an adoption is not required if:

- (1) The parent's rights have been terminated;
- (2) The parent has voluntarily relinquished his or her parental rights;
- (3) The parent has been declared incompetent.

(b) Written consent to an adoption is required from:

- (1) The biological or adoptive mother;

- (2) The biological, adoptive, or acknowledged father;
- (3) The custodian, if empowered to consent;
- (4) The Court, if the custodian is not empowered to consent;
- (5) The child, if he or she is over 12 years of age.

23.030 - Execution of consent to adopt

Written consent to an adoption shall be executed and acknowledged before the Court. Consent shall not be accepted or acknowledged by the Court prior to 10 days after birth of the child. Consent of a child over the age of 12 years shall be made orally either in open court, or in chambers with only the Judge, the child and any other person(s) he or she deems necessary.

23.040 - Who may file an adoption petition

Any person may file a petition for adoption. The petition shall be initiated by the person proposing to adopt. 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 parent shall not be required to join in the petition.

23.050 - Contents of adoption petition

(a) 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, sex, 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;
- (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.

(b) 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.

(c) All petitions must be signed and dated by the petitioner, and must be notarized or witnessed by a Clerk of the Court.

23.060 - Notice

Notice shall be provided in accordance with the notice procedures set forth in Section 22.050 except that the Court may determine that it is unnecessary to give notice to specific individuals, including a parent whose parental rights have been terminated.

23.070 - Home study

When a petition for the adoption of a child is filed with the Court, the Court shall immediately request that the Social Services 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 circumstance of the home, the petitioner and his ability, both physical and mental, to assume the responsibilities of a parent of the child. The home study shall contain other pertinent information designed to assist the Court in determining the best placement for the child. The home study will also address the issue of whether or not the home most closely resembles that of the child's culture, identity, and where applicable, his or her tribal affiliation. The home study or report shall not be required where the proposed adoptee is an adult.

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 Court. The home study shall be submitted to the Court no later than 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.

23.080 - Withdrawal of consents

(a) Any consent given under the provisions of this chapter may be withdrawn by the person or agency which gave the consent at any time prior to the entry of a final decree of adoption. No reason need be stated and no hearing need be held on such withdrawal.

(b) All withdrawals must be in writing and notarized or witnessed by a Clerk of the Court, with the original being filed with the Court.

(c) Within two years 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 entry of the decree.

23.090 - 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:

- (a) Extended family member;
- (b) A tribal member or person eligible for tribal membership;
- (c) Person who has a relationship with the child but is not related;
- (d) Other Indian person(s); and
- (e) Any other person who can provide for the special needs or requirements of the child/adoptee and can provide a suitable home. If this placement option is ordered, then this person(s) must have knowledge of the child's tribal affiliation and experience and/or training in providing for the child's special needs.

23.100 - Hearing procedures

(a) An adoption hearing shall be held within 90 days of receipt of an adoption petition from the prospective parent(s). The 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 Court shall examine the:

- (1) Validity of written consent;
- (2) Termination of parental rights order;
- (3) Length of time of the child's ward ship by the Court;
- (4) Special conditions of the child;
- (5) Parental communication with the child;
- (6) Child's consent to adoption, if he or she is over 12 years of age;
- (7) Home studies or other reports; and
- (8) Order of preference of placement.

(b) The petitioner and the proposed adoptee shall appear personally at the hearing. During the hearing the Court shall advise the party(s) of their basic rights as provided in Section 14.010. The Judge shall examine all persons separately, and may, if satisfied that all other requirements of this chapter have been met, enter a final decree of adoption, or may place the person to be adopted, if a child, in the legal custody of the petitioner for a period not to exceed six months prior to entering a final decree of adoption.

(c) If the Court is satisfied that the adoption will not be in the child's best interest, or finds that all of the requirements of this chapter 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.

(d) Proceedings for termination of the parent-child relationship and proceedings for adoption may be consolidated and determined at one hearing; provided, that all the requirements of this subchapter, as well as Section 22.010 through 22.150, governing termination, are complied with fully.

(e) The hearing shall be informal in nature. Concerned parties may present evidence relating to the situation. Hearsay evidence will not be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's extended family and other persons determined to be appropriate by the Court shall be admitted.

23.110 - Adoption decree

(a) If the Court finds that the requirements of this chapter have been met and that the child's best interests will be satisfied, a decree of adoption may be entered. An adoption decree shall remain interlocutory for six months from date of entry of such decree, and shall become final at the expiration of said six months.

(b) A person, when adopted, may take the name of the person adopting, and the two shall thenceforth sustain toward each other the legal relation of parent and child, and shall have all the rights and shall be subject to all the duties of that relation, including all of the rights of a child of the whole blood to inherit from any person, in all respects, under the provisions of inheritance and succession of the Tribe's Probate Code (Chapter 8.04 RVITC).

(c) The order shall be kept in the records of the Round Valley Tribe, Bureau of Indian Affairs and the Bureau of Vital Statistics of the State of Washington.

Chapter 24 - Modification, Revocation or Extension of Court Orders

24.010 - Motion to modify, revoke or extend Court order

The Court may hold a hearing to modify, revoke or extend a Court order under this Code at any time upon the motion of:

- (a) The child;
- (b) The child's parent(s), guardian or custodian;
- (c) The prospective adoptive parent(s);
- (d) The child's counsel or guardian ad litem;
- (e) The Tribal Court Counselor or Children's Services Caseworker;
- (f) The Child Welfare Presenter;
- (g) The institution, agency, or person vested with the legal custody of the child or responsibility for protective supervision; or
- (h) The Court on its own motion.

24.020 - Hearing procedure

Any hearing to modify, revoke or extend a Court order shall be held in accordance with the procedures established for the order at issue.

Chapter 25 - Child/Family Protection Records

25.010 - Tribal Court records

A record of all hearings under this Code shall be made and preserved. All Tribal Court records shall be confidential and shall not be open to inspection to any but the following:

- (a) The child;
- (b) The child's parent(s), guardian or custodian;
- (c) The prospective adoptive parent(s);
- (d) The child's counsel or guardian ad litem;
- (e) The Tribal Court personnel directly involved in the handling of the case;
- (f) Any other person by order of the Court, having legitimate interest in the particular case or the work of the Court.

25.020 - Law Enforcement and social services records

Law Enforcement records and files concerning a child shall be kept separate from the records and files of adults. All Law Enforcement and social services records shall be confidential and shall not be open to inspection to any but the following:

- (a) The child;
- (b) The child's parent(s), guardian or custodian;
- (c) The child's counsel or guardian ad litem;
- (d) Law Enforcement and social services personnel directly involved in the handling of the case;
- (e) The Tribal Court personnel directly involved in the handling of the case;
- (f) Any other person by order of the Court, having legitimate interest in the particular case or the work of the Court.

Legislative History: Adopted at emergency meeting (Rules of Governance Art.2; Sec. 2(H)) by the Tribal Council on February 20, 2014; amended by the Tribal Council on June 16, 2014 (to be in effect until August 16, 2014 or until amended).