

CHITINA VILLAGE COUNCIL

Tribal Court Codes

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Passed by Chitina Village Council on September 17, 2022

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Title 2 Family Code

Chapter 1 Child Protection

Section 1 Definitions

- A. *Abandon* means the disregard of parental responsibilities toward a child by failing to provide support, supervision, or maintain regular contact without good cause.
- B. *Adoption* means the previous parents' rights and responsibilities to the child are terminated, and the child is now the child, legal heir, and lawful issue of only the adoptive parents.
- C. *Adult* means a person who is eighteen (18) years of age and older.
- D. *Caseworker* means a person or persons hired or appointed by the Council or the Tribal Court to work as the Tribe's social worker for child protection cases, which can include an Indian Child Welfare Act (ICWA) worker.
- E. *Child* means a person who is under eighteen (18) years of age.
- F. *Child in Need of Aid* is a child who meets one or more of the following:
 - a. The child refuses to live at home or refuses to accept available care, or
 - b. The child has no parent caring or willing to provide care for them, and under this entire code, a parent means a biological or adoptive parent, legal guardian, or custodian who cares for the child as if they were a parent, and this includes the United States federal government's definition of an Indian Custodian, or
 - c. The child is in need of medical care for substantial physical or mental harm and the child's parents are unwilling to provide the medical treatment, or
 - d. The child suffered substantial physical or mental harm or there is immediate risk that the child will suffer substantial physical or mental harm as a result of the actions or conditions created by the child's parents, or
 - e. The child has been sexually abused either by a parent or by another and the parents could have reasonably prevented it.
- G. *Consent* means a decision that is given in the presence of the Chitina Tribal Court, with a sworn statement that is signed by the person giving the consent stating that they know what they are doing and they are doing it voluntarily. Any person giving consent has a right to an interpreter to explain consent and its consequences.
- H. *Emergency* means there is such a high risk of harm to the child that the Tribal Court must take custody of the child immediately in order to avoid that harm.
- I. *Family* means the person's parents, children, siblings, grandparents, great-grandparents, aunts, uncles, great-aunts, great-uncles, and cousins.
- J. *Guardianship* means a legal guardian holds legal rights and responsibilities to a child that are equal to those of a parent, but the child's parents still hold all of their own rights and responsibilities to the child.

- K. *Legal Custody* means the authority to make major decisions for a child.
- L. *Parent* means a biological or adoptive parent, legal guardian, or custodian who cares for the child as if they were a parent, and this includes the United States federal government's definition of an Indian Custodian.
- M. *Physical Custody* means the authority to have a child live with you under your care.
- N. *Village* means the territory that the council of the Native Village of Chitina recognizes as its village, under its jurisdiction.
- O. *Ward* means a child who has been taken into custody by the Tribal Court, making the Tribal Court the child's legal guardian.

Section 2 The People and Tribes Involved in the Case

2.01 Rights of Parents

In Child Protection cases, the child's parents have a right to notice of all court hearings and an opportunity to be heard, a right to bring evidence and witnesses and to question other witnesses that are brought, and a right to hear the caseworker's reports on the child and the child's parents.

2.02 Rights of Intervening Tribes

Any Tribe may petition to intervene in the case if the child is a citizen of that Tribe or eligible for citizenship. The Tribal Court will decide whether to allow the Tribe to intervene based on whether it will be in the best interests of the child, and issue an Order of the decision to the parents and the Tribe that made the request. Once a Tribe intervenes, it must be afforded all rights that the parents are afforded regarding notice, the right to be heard and to present evidence, and the right to hear the caseworker's reports on the child and the child's parents.

2.02 Rights of Other Relatives and Foster Parents

Other relatives and foster parents of the child can request to be observers in the case by sending a request to the Tribal Court. The Tribal Court will provide the request to the parents and intervening Tribes and provide them an opportunity to respond. The Tribal Court will then approve or deny the request based on whether it will be in the best interests of the child, and issue an Order of the decision to the parents, intervening Tribes, and person who made the request. Observers, once approved, have a right to notice of hearings, but not a right to be heard nor a right to hear the caseworker's reports on the child and the child's parents, unless the Tribal Court allows it.

Section 3 Confidentiality and Sharing Information

3.01 Confidentiality

All Child Protection cases are confidential. No person may give or release any information about the case, including the names of the parents and of the child, to anyone other than the parents in the case, intervening Tribes, and the Court, unless authorized by the Court to do so.

3.02 Other Relatives and Foster Parents Observing

Observers are not allowed to hear any caseworker's reports on the child and the child's parents. If a caseworker will be giving a report or discussing a parenting plan in a hearing, observers cannot be present during that portion. Observers can hear confidential information only if the child's parents participating in the case provide a signed release allowing it, or if the Tribal Court authorizes it.

3.03 How to Share Information

A caseworker can share information with other service providers, tribal government, State Court, or officers of the law only with an order from the Tribal Court or a signed release from the child's parents who are participating in the case. To receive the Tribal Court's permission, the caseworker must file a request for release of information in the case, and the Tribal Court will decide whether to approve or deny the request in whole or in part, based on whether it is in the child's best interests. The Tribal Court must make a written order of its decision and provide it to whomever requested it.

3.04 The Parents' Right to Information

If a parent requests it, they have a right to all of the caseworker's notes regarding their case, and all information a parent would normally have in a Child-In-Need-of-Aid case in Alaska state court. If this information is requested, a caseworker must provide it continuously throughout the case, at least one week before each hearing.

Section 4 Urgency of Child Protection Cases

All Child Protection cases must be considered urgent and must be placed ahead of all other cases that the Tribal Court has before it.

Section 5 Child Advocates

The Tribal Court may assign a child advocate to represent the interests of the child. Any child advocate must have the proper training for this work, and be approved by the Tribal Council.

Section 6 Placement Preferences

In any placement of a child, the Tribal Court must place the child according to the following list of preferred placements, ranked from highest to lowest priority.

1. A member of the child's family who is a citizen of the Native Village of Chitina;
2. Another citizen of the child's Tribe who lives within the village;
3. A citizen of one of the other Tribes in the Ahtna region;
4. A member of the child's extended family who lives outside the Ahtna region;
5. A foster home that is approved or specified by the child's Tribe;
6. A citizen of another Tribe;
7. An Alaska Native foster home;
8. An institution for children operated by an Alaska Native organization which has a program suitable to meet the child's needs;
9. An institution for children which has a program suitable to meet the child's needs.

Section 7 How to Start a Child Protection Case

To start a child protection case, a caseworker must get approval from the Council to bring the case, and the caseworker must file a petition that contains the following information:

1. A written statement of why the caseworker believes the child is a Child in Need of Aid, and
2. A signature from the Council showing that the caseworker got the Council's permission to file the case, and
3. The name, date of birth, and last-known address of the child, and
4. The name and last-known address of the child's parents, if any, and under this entire code, a parent means a biological or adoptive parent, legal guardian, or custodian who cares for the child as if they were a parent, and this includes the United States federal government's definition of an Indian Custodian,
5. The steps taken to provide notice to the child's parents, custodians, and Tribe(s) about the case, and
6. If either the residence of the child is believed to be in an Alaska Native village or on a reservation, the name of the Tribe affiliated with that village or reservation, and
7. The Tribal affiliation of the child and of the parents, and
8. A statement of the efforts taken to contact other Tribes that this child may be affiliated with, and
9. If the petition is for emergency removal or continued emergency placement, it should contain a statement of the risk of physical or mental harm to the child and any evidence that the emergency removal or placement is necessary to prevent such physical or mental harm to the child, and
10. A statement of the efforts that have been taken to assist the parents so the child may safely be returned to their custody.

Section 8 Notice and Service Requirements

8.01 Notice and Service for Parents and Tribes

The Court Clerk must give notice of the petition, any hearing, and any decision by the court to the parents and any Tribe that has intervened, by personal service or by other means, (such as registered mail, leaving the documents with a person at the recipient's residence who is believed to be a responsible adult, publication in a newspaper, informal communications methods: such as verbal notice, email, Facebook or other social media message, or posting in a public place in the community, including the Tribe's website), as long as these other means are reasonably designed, in light of all the circumstances, to notify the parents or Tribes in the case. The Notice must contain the time, date, and place of the next hearing, and inform the recipient that they have the right to be heard, present evidence, and to have their own witnesses and question witnesses presented by the others in the case.

8.02 Foster Parents

The Court Clerk must also give Notice of hearings to foster parents in any manner the Court Clerk believes will reasonably notify them. The Notice must contain the time, date, and place of the next hearing, and inform the recipient that they only have a right to observe the case, that they are not allowed to hear confidential information, and that they may speak in the case only if authorized by the Tribal Court.

8.03 Other Relatives

If other relatives of the child make a request to the Tribal Court to be part of the case, and the Tribal Court authorizes them to be observers, the Court Clerk must give them notice of the hearings in any manner the Court Clerk believes will reasonably notify them of the time, date, and place of the hearing, and inform them of the same information required in the notice to foster parents.

8.04 Proof of Service

Whenever a person, organization, or Tribe is successfully served, the Court Clerk must file a proof of service in the case, describing how service was made. If the Court Clerk is unable to confirm service was made, it must include the efforts it took.

8.05 When a Parent or Tribe is Not Present

If a parent or Tribe does not appear in Tribal Court, the Court can continue the case without them only if the Tribal Court finds that the Court Clerk made a reasonable effort to notify the parent or Tribe.

Section 9 Emergency and Temporary Decisions

9.01 Emergency Order

If the Tribal Court finds sufficient evidence in the Petition that there is an emergency, it may make the child a ward of the Tribal Court, take physical and legal custody of the child, and make a temporary placement of the child. The Tribal Court must follow the placement preferences specified in this code. The Tribal Court must issue a written Emergency Order describing its actions, and may take this action without holding a hearing, and without notice to the child's parents, if necessary. The Court Clerk must provide a copy of the Emergency Order to the child's parents within twenty-four (24) hours of the court's decision. If the child is not a tribal citizen, eligible or enrolled, and the Tribal Court decides the child is not within the court's jurisdiction, the Court Clerk must provide notice of the action to the appropriate state officials.

9.02 Temporary Custody Hearing

The Tribal Court must schedule a Temporary Custody Hearing within seventy-two (72) hours of when the Tribal Court issued the Emergency Order, or within seventy-two (72) hours from the date the petition was filed if there was no Emergency Order. The Court Clerk must give notice of this hearing according to this chapter's notice requirements.

The Tribal Court must decide if it is likely that the child is a Child-In-Need-of Aid. If it is likely, then the Tribal Court will keep or take physical and legal custody of the child and continue to have the child be a ward of the Tribal Court until a decision is made at the Regular Hearing.

The parents and intervening Tribes have the right to state their own positions, provide evidence, have their own witnesses, and question witnesses called by others involved in the case. The Tribal Court must issue an Order stating its decision and notifying the parents and intervening Tribes that this is a temporary arrangement until the Tribal Court decides on a more permanent placement.

Section 10 Helping the Family

The caseworker must help the parents meet the goals found in the case plan by staying in frequent, close contact, and by helping the parents connect with social, medical, and behavioral services.

Section 11 Regular Hearing

11.01 Scheduling the Hearing and Giving Notice

The Tribal Court must set a Regular Hearing within thirty (30) days of a Temporary Custody Hearing, and give notice to the parents, intervening Tribes, and anyone else the Tribal Court has allowed to observe. The parents, Tribe, and social services in the case may agree to have the hearing held at a later date, or the Tribal Court may order a hearing at a later date, if the Tribal Court decides it is in the child's best interests.

11.02 Caseworker Report and Recommendation

The caseworker must provide his or her report and recommendation to the parents and intervening Tribes at least seven (7) days before the Regular Hearing, and the caseworker must also summarize their report and recommendation at the Regular Hearing. The parents and intervening Tribes must have an opportunity to respond to the report during the Regular Hearing. Foster parents and other relatives who are participating as observers are not allowed to hear this report, and should be separated from any portion of the case where this information is shared, unless the parents have given permission in a signed release or the Tribal Court has ordered that it is necessary.

11.03 Decision to Be Made at Hearing

The Tribal Court must decide whether or not the child is a Child in Need of Aid. If the Tribal Court finds the child to be a Child in Need of Aid, the Tribal Court must issue an Order keeping physical and legal custody of the child with the Tribe and continuing to have the child be a ward of the Tribal Court for a period of no longer than two (2) years. The Tribal Court must decide where to place the child according to this code's placement preferences.

The Tribal Court may also have the children stay with the parents as long as the caseworker has created a safety plan. The Tribal Court may order the parents to take educational classes, alcohol or drug treatment, psychological or psychiatric treatment, or other similar treatment or program.

11.04 Case Plan and Family Support

If the Court does not decide to dismiss the case, it must order a caseworker to create a case plan with the goal of reunifying the children with their parents while keeping the children safe. The caseworker must also make necessary referrals, help parents achieve the goals, and monitor the family's progress. The case plan must include a recommendation for permanent placement of the child (such as reunification with a parent, adoption, or guardianship), and a timeline.

The caseworker must file a Case Plan with the Tribal Court, and provide copies to the parents and intervening Tribes, no more than ten (10) days from the Regular Decision.

Section 12 Review Hearings

12.01 Timing

The Tribal Court must hold a review hearing every six (6) months from the Regular Hearing. A Review Hearing can also be held at any time if requested by a parent, intervening Tribe, caseworker, or the Tribal Court itself. The Tribal Court will then decide whether it is in the child's best interest to hold the review hearing at the time requested. If the hearing is held, and the case remains open after the hearing, the next review hearing must be held six (6) months from that hearing.

12.02 Notice

The Court Clerk must provide notice of the hearing to parents, Tribes who intervened, and observers by whatever means the Clerk determines is reasonably likely to notify them of the hearing's time, date, and place.

12.03 Decision

The Review Hearing is meant to allow the Tribal Court to check in on the placement that was decided on during the Regular Hearing. At any Review Hearing the Tribal Court can decide on a permanent placement for the child, give legal custody to the appropriate people, and close the case, or keep the case open and continue to have review hearings every six (6) months, with a maximum of two (2) years from the date of the Regular Hearing.

Section 13 Permanency

13.01 Two-Year Deadline

A permanent placement for the child must be made, and the case closed, within two (2) years from the date of the Regular Hearing. This decision can be made at the Regular Hearing itself, or any Review Hearing.

13.02 Permanent Placement Requirements

The permanent placement of the child must follow this code's placement preferences, and be in the child's best interests.

13.03 Adoption

When a child is adopted by a new parent, the previous parents' rights and responsibilities to the child are terminated. If the Tribal Court decides that the child's permanent placement is an adoption, it must make the following findings, and include them in its order:

- a) The child's parents provided proper consent to the adoption, or the Tribal Court decided to terminate the parents' rights in favor of adoption; and
- b) The adoptive placement follows this code's placement preferences; and
- c) The child is the child, legal heir, and lawful issue of the adoptive parents; and
- d) The Court Clerk must forward a certified copy containing Chitina Tribal Court's seal to the appropriate state agency for the purpose of obtaining a correct birth certification;
- e) Any visitation rights of others that the Chitina Tribal Court has granted; and
- f) The child is no longer in the custody of the Chitina Tribal Court.

13.04 Guardianship

When a child is given a guardian, the previous parents' rights and responsibilities to the child are not terminated. The guardian gains the rights and responsibilities equal to those of a parent in addition to the previous parents. If the Tribal Court decides that the child's permanent placement is a guardianship, it must make the following findings, and include them in the order:

- a) The child's parents provided proper consent to the guardianship, or the Tribal Court decided that the child is without proper care and therefore needs a guardian; and
- b) The guardianship follows this code's placement preferences; and
- c) The new guardian can provide appropriate and adequate parental care; and
- d) The guardianship is in the best interests of the child; and
- e) Any visitation schedule that the Chitina Tribal Court decides is in the best interests of the child; and
- f) The guardianship can only be terminated upon a new petition asking the Chitina Tribal Court for that termination; and
- g) The child is no longer in the custody of the Chitina Tribal Court.