

Sitka Tribe of Alaska

Children's Code

April 15, 2020

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By the Sitka Tribal Council

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Statement of the Rights of Children

A PROCLAMATION

Approved by the For Our Grandchildren Committee of the Sitka Tribe of Alaska

Date: July 11, 2001

PREAMBLE

We the members of the For Our Grandchildren Committee in order to provide for the health, safety, education, and wellbeing of the children of the Sitka Tribe of Alaska (Tribe), and to preserve and promote the values, customs, and traditions of the member of the Tribe, hereby adopt this statement of the rights of children which is recognized by our committee members to have been observed as part of our customs and traditions since time immemorial.

AFFIRMATIONS

- 1) We recognize our moral, social, spiritual and financial responsibility to protect and provide for the needs of the children of our Tribe; and
- 2) We believe that all children are created with the inherent right to be safe, to be loved and nurtured, and to have adequate health care, nutrition and shelter; and
- 3) We believe that each child has the right to be free of physical or emotional abuse, to be protected from sexual abuse and exploitation, and to be free from neglect, discrimination and the demeaning or destructive acts of others; and
- 4) All our children have the right to a name and tribal identity, and the right not to be separated from his/her birth parents and to know their extended family and community, which are an important part of the child's tribal identity as well as essential to assure our survival as a people; and
- 5) All our children have the right to learn about and benefit from their tribal history, culture, language, spiritual traditions and philosophy; and
- 6) We believe that parents have primary responsibility for providing their children with proper prenatal care, ongoing age-appropriate physical and emotional care, including emotional nurturing, adequate food, shelter, education, health care; and
- 7) We believe that parents have an absolute responsibility to provide their children with a safe and healthy home and childcare environments, to teach their children safety skills, and to provide appropriate supervision; and
- 8) We believe that a child's relationship with his or her immediate and extended family (including but not limited to persons related by moiety, clan, and clan house) is essential to guide, nurture and support the child in his or her healthy

- development; and
- 9) We believe that we too have a responsibility to assure that the children of our tribe have a standard of health, safety, education, and nurturing necessary to assist them in gaining healthy values and behaviors which will help them mature into healthy and productive members of our tribal community; and
 - 10) We believe that the treatment of children, and therefore the welfare of our tribal children is the responsibility of the entire community, and that this responsibility extends to all the Native children who reside in our community, regardless of their tribal origins or their length of residence; and
 - 11) We recognize that domestic violence, substance abuse, lack of supervision, inadequate medical care and physical or emotional neglect may result in far-reaching and traumatizing effects on a child's physical and emotional growth and development; and these problems can create a need for an urgent response to minimize ongoing trauma to children; and
 - 12) Maltreated, neglected, parentless and traumatized children often need immediate special care, treatment and support in a way that promotes their healing and safety, as well as their sense of dignity, value and future well-being.

COMMITMENTS

- 13) The For Our Grandchildren Committee issues and proclaims this Statement of the Rights of Children in order to assure that all of the children of our community who are under the age of eighteen years have access to adequate food, clothing, shelter and health care; that they are protected and supervised to assure their safety and health; that they have access to nurturing, appropriate cultural teachings and adequate education/schooling - all of which are their inherent and basic rights as Native children.
- 14) The For Our Grandchildren Committee shall advocate for and promote the safety, dignity and well-being of the community's children throughout all governmental, business, social services and educational agenda and all other institutions involved in the community for any length of time.
- 15) This proclamation is undertaken on behalf of our children with the goal of preparing them to assume a creative, productive and honorable role in our society, and to assure that the ultimate future of our people is considered in each action considered from this day forward by the For Our Grandchildren Committee and the Tribe.

CHAPTER I Purpose, Jurisdiction, Rules of Construction and Definitions

Section 1.01 Purpose

- a) Children are the Tribe's most important resource. Safeguarding their welfare honors the values of the Tribe's ancestors, promotes the health and success of the Tribe's present generation, and provides untold blessings for the Tribe's future.
- b) Children deserve to receive care and guidance preferably from their own family, so as to take their place as healthy adults and leaders within the Tribe and greater society.
- c) The Sitka Tribal Court system and the Sitka Tribe's Social Services Department are partners in this essential enterprise and shall use best efforts in cooperation with each other and other governments to return young tribal citizens to their rightful place within the community.

Section 1.02 Jurisdiction

- a) The Sitka Tribe of Alaska properly exercises jurisdiction over Native youth and families who are citizens or eligible to be citizens of the Sitka Tribe Alaska or are otherwise subject to the jurisdiction of the Sitka Tribe of Alaska.
- b) The Court may accept a transfer or waiver of jurisdiction from any other court or tribal government of competent jurisdiction upon written request, provided that acceptance of the case is without conditions or restrictions and the Tribe can access the necessary resources for an independent decision based on the best interests of the youth and family.
- c) Upon application to the Sitka Tribal Court, the Court may waive fully or partially, its jurisdiction to any other court of competent jurisdiction, provided the Tribal Court makes a written determination that the waiver is in the best interests of the youth and they will not be deprived of his or her cultural heritage, tribal identity or dignity by the Court's decision regarding jurisdiction.

Section 1.03 Rules of Construction

- a) This Code shall be construed and interpreted liberally to achieve the purposes stated, and the Tribal Court, at its discretion, may seek guidance from the Court of Elders, may use any source of traditional written or unwritten Tlingit law, and

may draw upon persuasive law from other jurisdictions in the following order of preference: Tribal Law; Federal Law; State Law.

- b) The Court shall apply this Code in a way that maximizes the Sitka Tribe of Alaska's sovereignty and duty towards its children and families while being mindful of resource to properly serve. The Court shall apply this Code in harmony with the Tribal Constitution, Tribal Law, the Indian Civil Rights Act and other applicable Federal laws. The Alaska Statutes, Regulations, and Policies can be instructive, but shall not control actions taken by the Sitka Tribal Court.
- c) A child/youth's connection to the Tribe and well-being as determined by the Tribal Court shall be a more important consideration than parental and custodial rights.

Section 1.04 Definitions

For purpose of this Children's Code, the following words and phrases shall mean:

- a) Abandonment means the disregard of parental or custodial responsibilities toward a youth by failing to provide support, upbringing or maintain regular contact without justifiable cause;
- b) Abuse means any action or failure to act that threatens the physical, emotional, spiritual, mental health safety or well-being of a youth;
- c) Adoption Under this Code is the legal process of transferring the responsibility and rights to parent a child of other biological or legal parents. It involves the acceptance of a lifelong relationship with a Tribal Youth. The form of adoption and preservation of identity, privileges of contact, and management of information is left to the discretion of the Tribal Court based on the best interests of the Tribal Youth.
- d) Aggravated Circumstances means factors involved in the commission of abuse that increases its enormity and injurious consequences;
- e) Best interests of a youth include but is not limited to, the following considerations:
 - Emotional, mental, physical, spiritual and social health;
 - Tribal Identity
 - Capability and desire of each parent or custodian to meet the youth's particular needs;
 - The wishes of the youth's parent, parents, or custodian;
 - The wishes of the youth, if they are of sufficient maturity and capacity to form an intelligible preference.

- The interaction and interrelationship of the youth with his or her parent(s), siblings, and any other person who may significantly affect the youth’s best interests;
 - Adjustment to home, school, and community as well as interest in stability;
 - Any other factor captured in the “The Statement of Children’s Rights” adopted by the For Our Grandchildren Committee
- f) Youth means any person subject to tribal jurisdiction under the age of 18, or a person subject to tribal jurisdiction who is 18 years of age, but still in High School or Vocational School. The Court is vested with the authority and discretion to expand this definition until 21 years of age when there is clear evidence of unique needs such as a disability or special education services warranting the extension of the terms of this Children’s Code to serve the best interests of a Tribal Youth. The term Youth can be used interchangeably with the concepts of Tribal Youth, Minor, or Child;
- g) Extended Family does not have a precise definition in tribal communities. Under Tlingit law and custom, there are many formal and informal ties that bind the community which may include bloodlines, marriage, friendship and bonds of care. Use of the term Extended Family is committed to the informed interpretation of the Tribal Court. The Court shall articulate the basis of its interpretation of ‘Extended Family’ when placing Tribal Youth with extended family.
- h) Guardianship means establishing a legal relationship between a Tribal Youth and adult caretaker that gives the guardian the rights and responsibilities to care for, and parent that Youth when their Parent(s) is not available or able to provide for their care. Legal Guardians most often have full custody of Youth, with both the authority and responsibility to make decisions concerning the protection, education, care, and discipline. A guardianship can be a temporary protective measure, or a more long-term plan for upbringing.
- i) Interested Parties means the individuals invited into Court and entitled to notice as determined by Section 2.06 below;
- j) Parent means
1. the biological parent of a youth;
 2. any person who has lawfully adopted a youth; or
 3. a person who the youth considers a parent, as determined by the Tribal Court
- k) Parental Rights means the right to physical custody, visitation and the authority to make major decisions about the Youth’s health, education, and welfare. The

right to pass property to a child through inheritance, and the right inherit from a child in the event of passing. With Parental Rights also comes the responsibility to provide for a Youth's basic physical and emotional needs in a way that serves their best interests.

- l) Rebellion means habitual conduct including, but not limited to, violence, truancy, use of illegal substances, running away from home or other conduct beyond the control of the youth's parent, custodian, or service providers;

Section 1.05 Out of Home Placement

For purposes of activities under this Code, separation of children from their parents should be viewed as an extreme remedy of last resort. When in the opinion of the Tribal Court such separation is necessary for the safety and well-being of the youth, preference should be given to placement with:

1. A member of the youth's extended family;
2. Other members of the youth's Tribe;
3. Other Native families;
4. Emergency placement or a safe placement with a person who has the desire to foster the youth's tribal identity and special needs.

The initial and primary goal for out of home placement episodes should be healthy and successful reunification of children with their parents. To this end, the Social Services Department shall keep a written record of interventions and efforts provided to the Family to encourage their participation in Reunification activities and efforts.

Section 1.06 Severability

Each provision of this Code stands on its own. Should any provision of this Code be determined invalid by a court of competent jurisdiction, that finding will not affect the validity of any other provision of this code.

Chapter II General Provisions, Administration, and Policy

Section 2.01 Reporting Child Abuse – Mandatory Reporting Requirements

- a) The care and safety of children is both a family and Tribal responsibility. All Tribal Council, Tribal Judges, Tribal Employees, and Tribal Contractors who provide services to the community in the areas of education, human services, health care,

child care, law enforcement, or spirituality are Mandatory Reporters when faced with the reasonable belief a youth has been abused or is neglected. Mandatory Reporters are under a duty to report suspected child abuse to both the Tribal Department of Social Services in addition to other mandatory reporting agencies. When this obligation is at odds with external licensing requirements, including but not limited to an Attorney's ethical duties to a client, the licensing requirements shall govern.

- b) All persons who report child abuse or neglect in good faith and without malice are immune from civil liability under tribal law for upholding their duty to report.
- c) Any person who knowingly fails to uphold a duty to report abuse, and any person who knowingly makes a false report may be subject to court imposed civil sanctions and penalties.

Section 2.02 Role of the Social Services Department

- a) Social Services may represent the Sitka Tribe of Alaska in Tribal Court actions involving tribal youth and families, and may designate a caseworker for that purpose; in cases where fundamental constitutional rights may be burdened, Social Services will consult with the Tribal Attorney for guidance.
- b) Social Services may request representation by a member of the Tribal Court Bar; representation shall become effective upon approval of the General Manager and Tribal Attorney.
- c) Social Services shall meet periodically with the staff of the Tribal Court to assist in the management of the court calendar and attend to the procedural administration of open cases. No factual evidence shall be presented, or substantive court decisions made without due process and the presence of the family and designated interested parties.
- d) Social Services shall develop policies and procedures to implement their responsibilities under this Code, including the policy to intervene, whenever possible, in Indian Child Welfare Act, 25 U.S.C. § 1901 *et. seq.* (hereinafter ICWA) proceedings as well as prompt notification within 72-Hours to the Tribal Court Clerk of any significant developments in a case or proceeding before the Court.
- e) Social Services shall ensure the confidentiality of all proceedings and records conducted under this Code, pursuant to section 2.05 of this code.
- f) Whenever practicable Social Services shall exercise its authority in coordination with the State's Department of Health and Social Services, and other appropriate agencies.

Social Services staff shall conduct themselves in a professional manner befitting officers of the Court.

Section 2.03 Role of the Staff of the Tribal Court

- a) Tribal Court staff shall implement the procedural requirements of this Code.
- b) Tribal Court staff shall meet periodically with the staff of Social Services, as described above;
- c) Tribal Court staff shall notify Social Services and interested parties of any new court filing affecting tribal youth.
- d) Tribal Court staff shall conduct themselves in a professional manner befitting officers of the Court.
- e) Tribal Court staff shall ensure the confidentiality of all proceedings and records conducted under this Code, pursuant to Sections 2.04 and 2.05 of this Code.

Section 2.04 Confidentiality of Records

- a) All records of children's proceedings are strictly confidential, and may be released only upon order from the Sitka Tribal Court; or through a verified release of information from the legal custodian. The Tribal Court Clerk should make a written form available to facilitate records requests.
- b) Hard copies of such records shall be kept behind a two-lock system, and records stored on computer hard drives or in cyberspace shall be secured, only accessible by persons directly authorized by the Sitka Tribal Court. With the permission of the Court, court records may be released as needed to verify custody or to protect the rights of the child.

Section 2.05 Confidentiality of Child Protection Cases

All child protection cases shall be considered and treated as confidential. All Tribal Court Judges, the Tribal Court Clerk, or tribal employees who participate in a case and involved agency personnel shall abide by the Tribe's confidentiality policy. Interested Parties, Witnesses, and other persons privy to confidential information shall abide by an administered oath of confidentiality enforceable through contempt of court proceedings.

Section 2.06 Determination of Interested Parties

Prior to the distribution of any Notice of Petition under this Code, and as necessary thereafter, the Presiding Judge shall determine who are the interested parties entitled to notice, and the extent to which different parties may be invited to participate in hearings. In making this determination, the Judge may consider any relevant information provided by Social Services and family concerning the prospective interested party's relationship with the youth, including but not limited to, familial ties, caretaking, and clan relations. The nature and extent of each Party's participation may also be decided such that the Court protects personal confidentiality as well as safety.

Section 2.07 Review and Approval of Forms by Judges

Any standard petitions, forms or documents developed by the Tribal Court Clerk shall be reviewed and approved by the Judges of the Tribal Court prior to distribution and use by any Petitioner. Such forms may be developed in coordination with other appropriate tribal departments.

Section 2.08 Problem Solving

At the Presiding Judge's discretion, alternative and traditional tools for dispute resolution may be ordered for any part, or the entirety of a case. In exploring problem-solving methods, the Court must remain mindful of safety when there is evidence of domestic violence.

Chapter III Guardianships

Section 3.01 Purpose

Tribal families have assisted each other with the raising of children since time immemorial. The Department of Social Services or Interested Parties may initiate this tradition through a Petition for Guardianship for a tribal youth in need of placement or protective action.

Section 3.02 Contents of Petition

A Petition for Guardianship shall be signed under oath before a notary, clerk of court, or a Judge and shall include:

- a) The legal name, birth gender, tribal enrollment status, birth date, birth place, current residence, clan affiliation if known, Tlingit name if known, and any unique medical, psychological or educational needs of the tribal youth who is the subject of the proposed guardianship.
- b) The name, address, telephone number, tribal enrollment status, current residence, clan affiliation if known, Tlingit name if known, current employment, and other contact information of the biological mother.
- c) The name, address, telephone number, tribal enrollment status, current residence, clan affiliation if known, Tlingit name if known, current employment, and other contact information of the biological father.
- d) The name, address, telephone number, tribal enrollment status, current residence, clan affiliation if known, Tlingit name if known, current employment, and other contact information of the proposed Guardian(s).
- e) The name and other contact information for potential Interested Parties.
- f) The facts which make the child in need of guardianship. The facts must be presented in a clear manner and shall include the following:
 1. A statement regarding why the biological parent(s) or current legal guardian, are not capable or willing to assume responsibility for the child's safety and welfare;
 2. Any aggravated circumstances or special facts the Tribal Court should be aware of;
 3. A brief description of the relationship between the proposed guardian and youth, with a statement regarding why the guardianship is in the best interests of the youth;
 4. Petitioners may include other evidence such as criminal history, photographs or other pieces of evidence that are relevant, reliable, and will assist the Court in understanding the purposes of the Guardianship Petition.

Section 3.03 Filing of Guardianship Petition

The Petition may be filed by the prospective Guardian, the Department of Social Services, or by leave of the Court – other Interested Parties. The Tribal Court Clerk shall make available a blank petition form indicating all the information required by the Court. Social Services may help petitioners fill out a petition for guardianship but are not in the position to provide legal advice. Upon completion, the Petition and filing fee, when not waived, shall be filed with the Tribal Court Clerk.

Section 3.04 Notice of Petition for Guardianship

The Tribal Court Clerk shall deliver the Notice of Petition for Guardianship and a copy of the Petition via personal delivery, electronic or paper mail service which provides evidence of service and notice, within five (5) business days of the filing to all interested parties, as determined under section 2.06. The Notice of Petition and a copy of the Petition shall be provided by hand delivery or electronic mail to Social Services within five (5) business days of the filing. Notice of emergency petitions for guardianship is governed by Section 4 below. Once service has been successfully accomplished, future documents may be served by regular mail, fax, reliable electronic mail address, or other practical means of communication provided by the Interested Parties.

Section 3.05 Case History and Recommendations

- a) When the Petitioner is Social Services, the Court shall issue an Order to the Department to complete and file with the Tribal Court a Case History and Recommendations Report with the Tribal Court Clerk within 45 days after receipt of the Order. Reasonable extensions of time may be granted upon request, in the best interests of the Youth. The Case History and Recommendations shall include:
 1. The facts establishing the need for the guardianship, including evidence of abuse, neglect, abandonment, or rebellion, or a request for voluntary placement by the custodian or parent;
 2. Evidence that guardianship is in the best interests of the tribal youth;
 3. Recommended length of the guardianship;
 4. Recommendations for monitoring the placement;
 5. Other terms and conditions necessary to provide for the best interests of the tribal youth, including but not limited to meeting special needs;
 6. A statement describing the availability of services and resources necessary for a successful guardianship;
 7. Criminal background checks on the petitioners, all members of the proposed household, and any others who have direct supervision over the tribal youth;
 8. Preference of the tribal youth, as appropriate;
 9. Recommendations regarding visitation and contact;
 10. Recommendations for the guardian's responsibilities;
 11. Recommendations for the parents' case plans and responsibilities; and
 12. Recommendations for screening, assessments, and support services.

13. Recommendations regarding child support, Permanent Funds and other sources of income.
 14. Reference to, or inclusion of evidence the Department relied upon in reaching its recommendations in the Report.
- b) When the Petitioner is not Social Services, the Department may screen the Petition for Guardianship and review Departmental resources before taking on the Case History and Recommendations Report as a matter of tribal government policy. If Social Services is unable to perform the Case History and Recommendations report, Petitioners may be required by the Tribal Court to contract for a Case History and Recommendations / home-study report by professional or organization with the required education and training to issue a report responsive to the requirements of Section 3.05(a) above.
 - c) The social work recommendations of a Case History and Recommendations Report is entitled to professional deference by the Court. The Tribal Court remains the final decision-maker regarding the youth's best interests' determination, however should the Court reach a different conclusion than the Report, the Court shall explain the reasoning for its decision.

Section 3.06 Hearing on Petition for Guardianship

- a) After the case history and recommendations report is filed, the Clerk shall, after consultation with the Tribal Court Judge, schedule a hearing date and time reasonably calendared to encourage the informed participation of all interested parties. The Notice of Hearing shall be sent to all Interested Parties by the Tribal Court Clerk. The Tribal Court may consider requests for continuances upon a showing of good cause.
- b) The Tribal Court Judge shall conduct the hearing in a fair manner, giving all interested parties an opportunity to speak and present witnesses and evidence on their behalf. The Judge shall ask questions necessary to make a determination sufficient to support findings required in an Order for Guardianship described in Section 3.07. The Court's inquiry may include a consideration of the preference of the tribal youth, where appropriate, although the Youth's preference is not binding on the Court.
- c) In cases where a Sitka Tribal Council member, employee, or close relationships to the same are Interested Parties, the Tribal Judge shall make satisfactory inquiry to safeguard the Sitka Tribal Code of Conduct, with special attention to protections against conflict of interest.

- d) At the hearing, the Court will consider the following criteria for Guardianship:
1. Tribal Youth should remain in the Home of their Parents or Legal Guardian unless the Parties agree, or the Court makes specific findings, that the Parent(s) or Legal Guardian are neither able or willing to assume responsibility for the youth's welfare with particular attention paid to this Code's definitions of Abandonment, Abuse, Rebellion, and Best Interests.
 2. Requirements placed on the Youth or family must be reasonably related to best interests, and should be the least restrictive option to achieve the Court's goals for the Youth as detailed in the Guardianship Order; and
 3. When the disposition involves placing a Youth outside of his or her own home or family, the least restrictive alternative should be selected. The alternative should be the one that most approximates the Youth's healthy tribal family environment, and which allows reasonable means to fulfill special, physical psychological, emotional, educational, spiritual, and cultural needs;

Section 3.07 Order for Guardianship

- a) At the conclusion of the hearing or within ten (10) business days after the hearing held under Section 3.06, the Tribal Court shall issue a written decision that either denies or grants the Petition.
- b) If the Petition is granted, the order shall include the following determinations of fact and law:
1. The facts establishing the need for the guardianship: evidence of abuse, neglect, abandonment, or rebellion. The need for a guardianship may also be established by other facts that do not tend to place blame on the Youth, parent or custodian, including but not limited to, a request for voluntary placement by the custodian or parent;
 2. A statement that guardianship is in the best interests of the Youth, including a statement regarding the Youth's preference, as appropriate;
 3. The length of the guardianship;
 4. Alternative Guardians or Co-Guardians to address the unexpected
 5. Parents' responsibilities per the placement order;
 6. Guardians' responsibilities per the placement order;
 7. The Social Services Department's responsibilities per the placement order;
 8. Other Interested Parties' responsibilities per the placement order;

9. A Release of Information authorizing Social Services to access information important to the best interests of Tribal Youth, and a direction to Legal Guardians to execute all other necessary documents and releases to authorize the Department to monitor and participate when necessary to protect the best interests of Tribal Youth.
 10. Other terms and conditions necessary to provide for the best interests of the Youth;
 11. A finding that the services and resources necessary for the successful guardianship are available to the Tribal Youth.
 12. Placement Plan designed to promote Long-Term Welfare of Youth
 13. A Direction to all Interested Parties, reminding of the strictly confidential and sensitive nature of all children's cases, with any breaches without permission of the Court punishable by contempt of court per Section 2.05 above.
- c) If the Petition is granted, the order may include the following determination of fact and law, if appropriate:
1. Provisions for visitation for Interested Parties;
 2. Any screening, counseling and/or treatment determined by the Court to be necessary and in the best interests of the Youth including but not limited to substance abuse, domestic violence, or mental health programs and services;
 3. Any determination regarding responsibility for child support and securing financial benefits available to the Tribal Youth;
 4. Whether appointment of a separate conservator or financial institution to safeguard the Youth's property is in the Youth's best interests; and
 5. The date of the next hearing, status review, or proceeding
- d) The Court shall issue a simplified 'Letters of Guardianship' free of confidential or sensitive information otherwise included in a Guardianship Order, so that the Department and Legal Guardians can provide proof of guardianship authority to outside agencies and persons without compromising private details that may surround the guardianship.
- e) If the Petition is denied, the order shall contain a brief statement of reasons why the petition was denied.

Section 3.08 Review of Guardianship

- a) The Court may, from time to time or on its own motion, order Status Review Hearings;

- b) Any Interested Party may petition the Court in writing to review a Guardianship Order should there be a significant change in circumstances impacting the Tribal Youth;
- c) The Court should screen the petition and decide within ten (10) business days whether to hold a hearing regarding the significant change in circumstances or issue a written decision denying the petition without need for hearing.
- d) If the Court decides to hold a hearing, the Clerk shall, after consultation with the Tribal Court Judge, schedule a hearing date and time reasonably calendared to encourage the informed participation of all interested parties. The Notice of Hearing shall be sent to all interested parties at their address of record by the Tribal Court Clerk.
- e) In all cases where an original guardianship order is modified, the Court shall issue a Modified Guardianship Order in writing, detailing any changes so that Interested Parties are able to operate off the most recent order's requirements.

Section 3.09 Dissolution of Guardianship

- a) Generally, a guardianship shall dissolve upon death, marriage, emancipation, adoption, or when the Youth reaches the age of eighteen (18) unless continued by the Court under terms as described in Section 1.04(e) above;
- b) A guardianship can be dissolved upon the petition of a parent or Social Services after notice and hearing, and upon a showing by clear and convincing evidence that: (1) The Parent(s) are willing and able to resume permanent care of the Youth; (2) the Youth is not at risk of harm and the original facts justifying the guardianship have been properly resolved; (3) that dissolution of the guardianship is in the best interest of the Youth.
- c) Guardians/Conservators of the Youth's property shall serve until the Court orders distribution of any funds held in trust for the tribal youth.

Chapter IV Expedited Guardianships

Section 4.01 Expedited Petition for Guardianship

- a) Social Services, or with leave of the Court, other Interested Parties, may make an expedited Petition for Guardianship when a Youth is at substantial risk of abuse or injury

- b) When Social Services takes an expedited action to remove a Youth from their own home, Social Services shall notify the Clerk of Court as soon as practicable, and shall file an expedited petition with the Court within three (3) business days of such removal. An expedited petition shall include all information reasonably available as detailed under Section 3.02 [Guardianship Petitions]. An expedited petition must also include an additional statement explaining the substantial risk of abuse or injury and the need to move at an expedited pace.

Section 4.02 Initial Notice and Hearings for Expedited Petition

- a) Upon the filing of an Expedited Petition, the Tribal Court Clerk shall consult with the Tribal Judge regarding a hearing to be held within three (3) business days; the Court may grant a short extension if there is good cause for postponement.
- b) The Tribal Court Clerk shall exercise due diligence providing notice to all Interested Parties. However, failure to secure participation under this Section shall not affect the validity of the proceedings.
- c) Any Interested Party not able to attend the initial expedited hearing may file with the Court a written request for an additional hearing to present new and significant information. The written request should explain the new and significant information so that the Court can screen the request and valid need for an additional hearing.
- d) The Court shall decide within five (5) business days whether to grant the additional hearing or issue a written decision with its reasoning for denying the request.

Section 4.03 Initial Order for Expedited Petition

The Tribal Court Judge shall issue an order at the conclusion of the hearing or hearings held under Section 4.02 that either grants or denies the Expedited Petition. The order shall include the determinations of fact and law required by Section 3.07 with an additional explanation of why the child has been found to be at substantial risk of physical, psychological, or financial harm. The granting of an Expedited Guardianship is meant as a temporary remedy to an immediate situation, and a Full Guardianship shall then follow the regular timelines and information gathering detailed in Chapter 3 above.

Chapter V Modification of Parental Rights

Section 5.01 General Provisions

The procedures provided in this Chapter are intended to carefully balance a child's right to be raised by their biological parents and extended family, with the child's right to safety, nurturance, and love. The Tribal Court is charged with using best efforts to protect the legal and cultural rights of the child and parents. Complete separation and termination of parental rights is a disfavored remedy and should be used in extreme circumstances or with the agreement of the Interested Parties.

Section 5.02 Petition for Modification of Parental Rights

Proceedings to modify parental rights shall be initiated by a petition signed under oath before a notary, Tribal Court Clerk or Judge and filed by Social Services, a parent of the Youth or, with leave of the Tribal Court, another Interested Party. The petition shall include the following information:

- a) Name, birth date, residence, clan affiliation and Tlingit name, if known, of the Youth;
- b) Name, residence, contact information and clan affiliation if known of both the Youth's parents or custodian;
- c) The current residence, placement of the Youth, and any special needs.
- d) a copy of the child's birth certificate;
- e) Name, birth date, residence, and relationship to the Youth of the petitioner; and
- f) a detailed statement of the facts and reasons justifying modification of parental rights.

Section 5.03 Notice of Petition for Modification of Parental Rights

The Tribal Court Clerk shall deliver the Notice of the Petition for Modification of Parental Rights and a copy of the Petition via personal delivery or mail service which provides evidence of service and notice, within five (5) days of the filing to all Interested Parties, as determined under Section 2.06. The Notice of Petition for Modification of Parental Rights and copy of the Petition shall be provided to Social Services, by hand delivery or electronic mail within three (3) days of the filing.

Section 5.04 Pre-Modification Report

- a) Within three working days of receiving the Petition, the Tribal Court Judge shall order Social Services to begin preparation of a pre-modification report to be completed within 45 (forty-five) days; reasonable requests for additional time to complete a quality report may be granted, in the best interests of the Youth. As part of any modification of parental rights, Social Services and/or the Family shall begin concurrent planning for placement and permanency. The Court may exercise subpoena power over relevant records of any social or health service agencies that may have information relevant to the best interests of the Tribal Youth.
- b) The Pre-Modification Report shall include, at a minimum, information sufficient for the Judge to make the findings required in an Order under Section 5.06, including:
 - 1) Summaries of consultations with the Youth's parent's, custodians, family members and all social services, health, education, and other persons who have had prior relevant professional or personal contacts with the Youth; and
 - 2) The written opinions of all professional or other persons consulted regarding the status of the Youth or parent in question.

Section 5.05 Notice and Hearing on Petition for Termination

- a) Upon the filing of the Pre-Modification Report, the Clerk shall, after consultation with the Judge, schedule a hearing date and time in the form of a Notice of Hearing for Modification of Parental Rights. The setting of the hearing should seek to encourage informed participation of the Interested Parties.
- b) The Tribal Court Clerk shall deliver the Notice of Hearing via personal delivery, mail service which provides evidence of service and notice, or when necessary, notice by publication to all Interested Parties as determined under Section 2.06. The Notice of Hearing shall contain a statement that a copy of this code and pleading forms, can be received by contacting the Tribal Court Clerk.
- c) The Pre-Modification Report may be released in full or redacted form to the Party whose parental rights are to be modified and the Petitioner. Other Interested Parties shall only receive a copy of the Pre-Modification Report in full or redacted form by order of the Tribal Court.

- d) Redaction of information shall be carefully performed by the Court so as to provide notice, due process, and the ability to respond to evidence, while guarding the privacy and safety of the Tribal Youth and Interested Parties.
- e) The modification hearing may be postponed for good cause upon motion of the Youth's Parent or Guardian, or Social Services.
- f) The modification hearing shall be conducted in a fair manner, providing Interested Parties the opportunity to present evidence necessary to support findings justifying an Order Modifying Parental Rights under Section 5.06 below.

Section 5.06 Order Modifying Parental Rights

- a) The Tribal Court may modify parental rights through written order supported by the specific grounds and facts that a modification is clearly in the Youth's best interests; and that other less restrictive options are not appropriate.
- b) The Order should specify what modification of parental rights is best for the Tribal Youth, including but not limited to: Suspension of Parental Rights, Relinquishment of Parental Rights, Termination of Parental Rights, as well as Open or Closed Permanency Options available to Youth and Family.
- c) Evidence the Youth has received willful, repeated, or serious neglect, abandonment, or abuse may justify modification through Termination.
- d) The Court may also modify parental rights with the voluntary written consent of a Parent whose rights are to be modified, and when fully satisfied that the terms and consequences of the modification have been explained and then acknowledged as understood by that Parent. The consent of the Parent or Guardian may be withdrawn for any reason any time prior to the entry of a final order modifying parental rights.
- e) The order modifying parental rights shall provide the placement plan developed by Social Services and/or the Family.

Section 5.07 Descendancy

No modification of parental rights shall affect a Youth's tribal citizenship or enrollment eligibility, clan affiliation and identity, traditional inheritance rights and responsibilities, nor any rights and privileges they may have as an indigenous/Native American.

Chapter VI Adoptions

Section 6.01 General Purpose

A Petition for Adoption is a request to the Tribal Court to make a decision as to the best interests of a Youth in a permanent placement that establishes or affirms a new bond of a parent and Youth.

Section 6.02 Petition for Adoption

- a) The Petition for Adoption shall be signed under oath before a notary, Tribal Court Clerk, or Judge and filed by the adoptive parent or parents.
- b) The petition shall contain the following information:
 - 1) the full name, residence, gender and clan affiliation of the Youth, and documentary proof of the date and place of the birth of the Youth to be adopted and tribal affiliation;
 - 2) the full name, residence, gender identification, occupation and clan affiliation of the adoptive parent or parents and a statement regarding their tribal affiliation;
 - 3) evidence of a court order, if any, terminating or modifying the parent-child relationship respect to each living parent of the Youth;
 - 4) proof of parental or custodial consent where the adoption is by voluntary consent of the Youth's parent, parents, or custodian;
 - 5) if the Youth being adopted is twelve years of age or older, proof of consent of the Youth;
 - 6) a solemn agreement by the adopting parents showing their intent to establish the parent/child relationship with the adoptive Youth; and
 - 7) a full description and statement of all property, real and personal, owned, possessed or held in trust for the benefit of the Youth.

Section 6.03 Consent to Adopt

- a) Any consent to adopt shall be executed and verified in writing, under oath in such a manner to satisfy the Tribal Court the terms and consequences of the consent were fully explained in detail and were fully understood by the parent, custodian or Youth. A consent to adopt can be merged with a Relinquishment of Parental Rights; but an Adoption proceeding cannot be merged with a Termination of

Parental Rights proceeding, which must be done separately and before an Adoption can move forward.

- b) The consent of a parent or custodian may be withdrawn by order of the Court after notice and an opportunity to be heard is properly given to allow the Petitioner, Youth and Interested parties regarding the withdrawal.

Section 6.04 Case History and Recommendations

Within five (5) working days after the filing of the Petition for Adoption, the Court shall order Social Services to begin a Case History and Recommendations (home study) report. In matters that may exceed tribal resources, the department may move for relief and/or assistance from the Petitioner in providing the Court a quality Case History / Recommendations Home Study Report by a professional or organization with the required education and training to issue a report responsive to the requirements for an adoption. The report should be filed with the Court within forty-five (45) days after the Court's request; extensions of time may be granted upon reasonable request, in the best interests of the Tribal Youth.

Section 6.05 Notice and Hearing on Petition for Adoption

- a) Upon the filing of a Petition for Adoption, the Clerk shall mail a copy of the Petition in full or redacted form to all Interested Parties as determined under Section 2.06.
- b) Upon the filing of the Case History and Recommendations Report, the Clerk shall, after consultation with the Tribal Court Judge, schedule a hearing date and time scheduled to accommodate informed participation by the Interested Parties, and issue a Notice of Hearing for Adoption regarding the same.
- c) The Notice of Hearing for Adoption and a copy of the Case History and Recommendations in full or redacted form, shall be sent to all Interested Parties by the Tribal Court Clerk. The question of the nature and extent of redaction will be decided by the Court.

Section 6.06 Order for Adoption

- a) The Court shall issue a written order, granting or denying the adoption petition.
- b) A Decree of Adoption may authorize the adoptive parent(s) to legally change vital records to reflect the legal adoption.

- c) The Adoption may contain a provision for visitation by the biological parents or guardian of the Youth when deemed in the best interests of the Tribal Youth.

Section 6.07 Adoption Records

Adoption files are confidential. Release of Tribal Adoption records can be authorized by Order of the Tribal Court after a Petition and showing of good cause, including release to the adopted person after having reached the age of majority.

Chapter VII Traditional Tlingit Law

Section 7.01 General Provisions

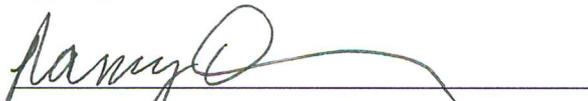
- a) Tribal Court Judges may use traditional Tlingit law to the benefit of children's cases under this code.
- b) Tribal Court Judges may apply Traditional Tlingit law in a case by referring to written or oral accounts of Traditional Tlingit life, interview of Elders or Cultural Bearers, call upon the *Haa Dachxanx'i Yan Jeeis* (For Our Grandchildren) Committee, or the Tribe's Cultural Resources Committee.
- c) Wisdom, stories, and information gathered from traditional sources may provide persuasive recommendations, but only the Presiding Judge shall have the authority and responsibility to make and enter a Final Order or Judgment.

CERTIFICATION

This Tribal Children's Code was enacted by a vote of 9 for and 0 against and 0 absent and 0 abstentions at a regular meeting of the Tribal Council on April 15, 2020 at which a quorum was present.


Kathy Hope Erickson, Tribal Chairman

Attest:


Nancy Douglas, Tribal Secretary