



AGUA CALIENTE BAND OF CAHUILLA INDIANS  
TRIBAL COUNCIL

---

REID D. MILANOVICH CHAIRMAN • CANDACE PATENCIO ANDERSON VICE CHAIRMAN  
SAVANA R. SAUBEL SECRETARY-TREASURER • JOHN R. PRECKWINKLE III MEMBER • VIRGINIA SIVA-GILLESPIE MEMBER

**ORDINANCE NO. 17-2024**

**AN ORDINANCE OF THE AGUA CALIENTE BAND OF  
CAHUILLA INDIANS ADDING A NEW CHAPTER 10.14  
CHILD PROTECTION TO THE AGUA CALIENTE TRIBAL  
CODE**

**WHEREAS**, the Agua Caliente Band of Cahuilla Indians (the "**Tribe**") is a federally recognized Indian tribe governing itself according to the Constitution and By-Laws of the Agua Caliente Band of Cahuilla Indians adopted by the Tribe on June 28, 1955 (the "**Constitution**"); and

**WHEREAS**, the Tribe, acting by and through its duly elected Tribal Council and pursuant to Articles II and IV (a) of the Constitution, exercises inherent sovereign authority and jurisdiction over the territory within the exterior boundaries of the Agua Caliente Indian Reservation (the "**Reservation**") and over other lands which may be added to the Reservation; and

**WHEREAS**, pursuant to Article V (a) and (b) of the Constitution, the Tribal Council, among other things, is empowered to administer the affairs and manage the business of the Band; to regulate the procedures of the Tribal Council and of other Tribal agencies; to enact ordinances and resolutions pertaining to Tribal affairs and to take all proper means to enforce the same; and

**WHEREAS**, the Tribal Council desires to add the chapter noted above to the Agua Caliente Tribal Code.

**NOW, THEREFORE**, the Tribal Council of the Agua Caliente Band of Cahuilla Indians does hereby ordain as follows:

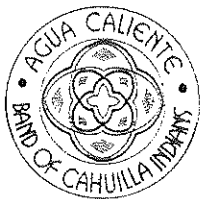
**SECTION 1.** All the recitals set forth above are true and correct, and the Tribal Council so finds and determines.

**SECTION 2.** New chapter 10.14 is hereby added to the Agua Caliente Tribal Code to read as follows:

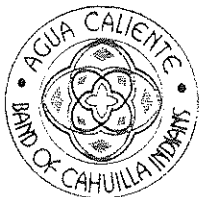
**CHAPTER 10.14. CHILD PROTECTION**

**Sec. 10.14.010. Purpose.**

This Chapter shall be liberally interpreted and construed to fulfill the following expressed purposes:



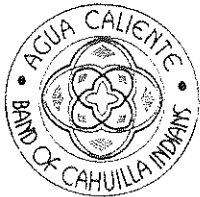
- (a) To acknowledge that the law clearly provides that Indian tribes remain a separate people, with the power of regulating their internal and social relations, and when tribes exercise this power of self-governance, they do so as part of their retained sovereignty and not as an arm of the Federal Government.
- (b) To acknowledge that the settled law makes clear that moreover, tribes possess “historic sovereign authority” that predates the United States Constitution.
- (c) To acknowledge that the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., as well as California child custody laws implementing the Act, recognize the right of tribes to hear and determine child welfare and custody proceedings in a manner established by tribal code or custom or administrative action. This includes foster care, termination of parental rights, guardianships, and adoption proceedings, including adoptions where termination of parental rights has not occurred.
- (d) To provide child welfare services to children and families that are in accord with the laws, traditions, and cultural values of the Tribe.
- (e) To preserve the opportunity for children to learn about their culture and heritage, and to become productive adult members of the Tribal community, by experiencing their culture on an ongoing basis.
- (f) To secure for each child coming before the Tribal Court the care, guidance, protection, and control needed to continue placement in his own home where possible and to serve the welfare and best interests of the child and to balance the interest, care and protection of the children and families within the jurisdiction of the Agua Caliente Band of Cahuilla Indians.
- (g) To preserve the unity of the family, preferably by separating the child from his parents only when absolutely necessary.
- (h) To take such actions that will best serve the spiritual, emotional, mental, and physical welfare of the child and the best interests of the Tribe to prevent the abuse, neglect, and abandonment of children.
- (i) To provide a continuum of services for children and their families with emphasis whenever possible on prevention, early intervention, and community-based alternatives.
- (j) To secure the rights of and ensure fairness to the children, parents, Indian custodians, guardians, and other individuals who come before the Tribal Court under the provisions of this Code.



- (k) To provide procedures for intervention in state court and other tribal courts' proceedings regarding Indian children and for transfer of jurisdiction over Indian children from state and other tribal courts to this Tribal Court based upon the presumption that child welfare and child custody proceedings should be handled in the Tribal Court.
- (l) To recognize and acknowledge the tribal customs and traditions of the Tribe regarding child-rearing.
- (m) To preserve and strengthen each child's cultural and ethnic identity whenever possible.
- (n) To provide a non-adversarial forum for culturally appropriate resolution of child welfare and child custody matters coming before the Tribal Court.
- (o) To provide a collaborative setting for all parties to serve the welfare and best interests of the child.
- (p) To recognize that the Tribal Court is in the best position to make decisions regarding the interests of the Indian child and keeping the Indian family together, including providing at-risk families with services and social supports. Furthermore, the cases are governed by this Tribe's laws as a Sovereign Nation.

**Sec. 10.14.020. Jurisdiction of the tribal court.**

- (a) The jurisdiction of the Tribal Court shall be civil in nature and shall include the right to issue all orders necessary to ensure the safety, well-being, and best interests of children who have been declared to be wards of the Tribal Court or as otherwise set forth in Section 2.60.030. The Tribal Court shall also have the power to enforce subpoenas and orders of restriction, fines, contempt, and other orders as appropriate.
- (b) General Jurisdiction. The Tribal Court shall have jurisdiction within the meaning of this Title over the following persons:
  - (1) A child under the age of eighteen (18) who is either an enrolled member of the Tribe or is eligible for enrollment in the Tribe.
  - (2) All children transferred to the Tribal Court pursuant to ICWA, 25 U.S.C. § 1911(b).
  - (3) A child of an enrolled member(s) of the Tribe or other Indians residing within the territory of the Tribe.
  - (4) A non-Indian child residing within the territory of the Tribe in the home of an enrolled member of either the Tribe or any other Indian tribe.



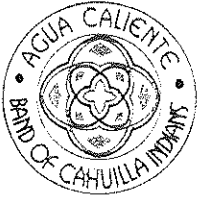
- (5) Any person causing a child to come within the jurisdiction of this Code.
  - (6) A Member who is residing within the territory of the Tribe who is pregnant and abusing alcohol or controlled substances.
  - (7) A non-Indian who is residing within the territory of the Tribe who is pregnant and abusing alcohol or controlled substances.
  - (8) Extended family residing in the household.
  - (9) Any person who consents to Tribal Court jurisdiction.
- (c) Jurisdiction over extended family. Where the Tribal Court asserts jurisdiction over a person under Section 10.14.030(b), the Tribal Court shall also have jurisdiction over the person's extended family whenever that Tribal Court deems it appropriate.
- (d) Continuing jurisdiction. Where the Tribal Court deems it appropriate, the Tribal Court may retain jurisdiction over children and their extended families who leave the territory of the Tribe.

**Sec. 10.14.030. Transfer of jurisdiction.**

- (a) Application of the Indian Child Welfare Act. The Tribal Court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, 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 except where specifically provided for in this Code.
- (b) Transfer to State Court or Other Tribal Court. In any proceeding before the Tribal Court, the Tribal Court may transfer the proceedings to an appropriate state court or another tribal court where the state or other Indian tribe has a significant interest in the child and the transfer would be in the best interests of the child.
- (c) 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 state, or tribal courts and the transfer would be in the best interests of the child.

**Sec. 10.14.040. Procedures for transfer from state court.**

- (a) Receipt of Notice: The Agua Caliente Legal Department or designee (ACLD) shall be the agent for service of notice of the state court child protection/custody proceedings, as required by the Indian Child Welfare Act.



(b) Intervention. ACLD shall file a motion to intervene as set forth in Chapter 10.12 with the state court within five (5) days of receipt of notice upon confirmation by the Agua Caliente Tribal Enrollment Committee as set forth in Chapter 10.04 that the child is an "Indian Child" pursuant to the Indian Child Welfare Act. Failure to file such a motion within the five-day time period shall not preclude the Tribe from intervening at a later date.

(c) Investigation and Pre-Transfer Report: The Caseworker shall investigate, file a written report, and issue a recommendation on transfer with the ACLD.

(d) Decision to Transfer. The ACLD shall consider these factors in deciding whether or not the Tribe should petition for transfer from the state court:

- (1) The best interests of the child.
- (2) The best interests of the Tribe.
- (3) Availability of services for the child and his family.
- (4) Prospects for permanent placement for the child; and
- (5) Conservation of Tribal resources.

(e) Request for Hearing. The ACLD shall request a hearing on the recommendation with the Tribal Court.

(f) Tribal Court Hearing on Transfer Recommendation: In the absence of exigent circumstances, the Tribal Court shall conduct a hearing to determine if the Tribal Court should accept transfer prior to the filing of a petition for transfer with the state court. The Tribal Court shall consider the following factors:

- (1) The best interests of the child.
- (2) The best interests of the Tribe.
- (3) Availability of services for the child and his family.
- (4) Prospects for permanent placement for the child; and
- (5) Conservation of Tribal resources.



(g) The Tribal Court has discretion to accept or deny transfers from state courts. The hearing on whether or not to accept transfer shall be conducted prior to dismissal of the matter in state court.

(h) Petition for Transfer. In the absence of exigent circumstances, the Tribal petition for transfer shall be filed in the state court by the ACLD or designee within five (5) working days of receipt of the Tribal Court's decision.

(i) Hearings upon Transfer. Upon receipt of transfer of jurisdiction from state court, the Tribal Court shall hold appropriate hearings in accordance with this Code.

**Sec. 10.14.050. Full faith and credit, and comity.**

(a) Recognition of foreign judgment. The Tribal Court shall give full faith and credit to the orders and judgments of the courts of other tribes, states, and counties unless:

(1) The court in question does not recognize the orders and judgments of the Tribal Court.

(2) The court in question did not have jurisdiction over the case or a party or parties to it.

(3) The order or judgment was based on fraud.

(4) Giving full faith and credit to the judgment of the court in question would violate the public policy of the Tribe or would be likely to harm the culture, traditions, or sovereignty of the Tribe; or

(5) The order or judgment is on appeal or being contested in another jurisdiction.

If full faith and credit is not extended, the Tribal Court may recognize such orders and judgment under principles of comity.

(b) Full faith and credit of foreign child support orders. Notwithstanding Subsection (a) above, the Tribal Court may recognize child support orders issued by other tribes and states, in accordance with Tribal law.

(c) Recognition of foreign court subpoenas. The subpoenas of a foreign court or subpoenas recognized under foreign law may be recognized by the Tribal Court and may have the same effect and are subject to the same procedures, defenses, and proceedings as subpoenas of the Tribal Court. Before any foreign court subpoena can be served on the Tribe, a Tribal entity, a Tribal Member, other person under the jurisdiction of the Tribe, or a custodian of Tribal records, the person seeking



to enforce a foreign court subpoena must obtain a Tribal Court order recognizing and enforcing the subpoena.

(d) Enforcement of court orders by state courts. Tribal Court civil money judgments shall be subject to enforcement in California state courts pursuant to the Tribal Court Civil Money Judgment Act, CA Civ. Pro. Code §§ 1731—1741, or the Uniform Foreign-Country Money Judgments Recognition Act, as may be applicable. California law mandates full faith and credit for protective orders issued by tribal courts in accordance with federal law requirements (see 18 U.S.C. § 2265; and California's Uniform Interstate Enforcement of Domestic Violence Protection Orders Act (Fam. Code, §§ 6400—6409).) Under these laws, a protective order issued by a tribal court is entitled to full faith and credit and enforcement and does not need to be registered in California.

#### **Sec. 10.14.060. Procedures and authorizations.**

(a) Procedures. The procedures of the Tribal Court shall be governed by the Rules of Court for the Tribal Court and Section 2.60.060, which are not in conflict with this Code.

(b) Social Services. The Tribal Court shall utilize such social services as may be furnished by any tribal, federal, state, or county agency provided that it is economically administered without unnecessary duplication and expense.

(c) Contracts. The Tribal Court may negotiate contracts with tribal, federal, state, or county agencies and/or departments on behalf of the Tribal Council for the care and placement of children before the Tribal Court subject to the availability of funds.

#### **Sec. 10.14.070. Tribal court personnel.**

(a) Tribal Court Judge.

(1) Appointment. The Tribal Court judge (s) shall be appointed as set forth in Section 2.60.040 of this Code.

(2) Qualifications. The general qualifications for Tribal Court judges shall be the same as established in Section 2.60.040 of this Code.

(3) Powers and Duties. Tribal judges shall carry out the duties and powers specifically enumerated in Section 2.60.030 and elsewhere in this Code.

(4) Disqualification or Disability. The rules of disqualification or disability of a Tribal Court judge shall be the same as established in Section 2.60.040.



(b) Representative of the ACLD. Powers and Duties. The ACLD or its designee shall represent the Tribe in all proceedings under this Code and the Indian Child Welfare Act. They shall also serve as legal counsel for the Tribal Family Services Department. They will make recommendations to the Tribal Council regarding needed amendments to this Code. The ACLD, Chief Judge of the Tribal Court, and the Tribal Court Administrator will be responsible for developing the necessary procedures for carrying out the objects of this code.

(c) Counsel for Parents. Parents may be represented at each stage of proceedings under this Code by an attorney or lay advocate at their own expense. It is prudent and advisable for the parents to have legal representation.

(d) Tribal Court Appointed Special Advocate (TCASA).

(1) A "TCASA" is a person who has been recruited, screened, selected, and trained, in accordance with Tribal and National CASA Association Standards who is being supervised and supported by a TCASA program approved by the Tribe, and who has been appointed by the Tribal Court as a sworn officer of the Tribal Court to help define the best interests of a child or children in Tribal Court proceedings.

(2) The duty of the TCASA is to represent the interests of the child, and he shall be a party to the proceedings and shall serve as guardian ad litem for the child.

(3) TCASA workers must be duly qualified and appointed pursuant to the TCASA program guidelines and policies adopted by the Tribe prior to working on any case and receiving confidential information.

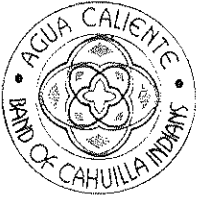
(4) Each TCASA is an officer of the Tribal Court, with the relevant rights and responsibilities that pertain to that role and shall act consistently with the Rules of Tribal Court pertaining to TCASA volunteers.

(5) The Chief Judge or Associate Judge shall swear in each TCASA before beginning his assignment as guardian ad litem.

(e) Appointment of Guardian Ad Litem. At every stage of the proceedings conducted under this Code, the Tribal Court may appoint a guardian ad litem for the child who may be a TCASA, lawyer, or a lay advocate approved by the Tribal Court.

(1) Role of the Guardian Ad Litem. The duty of the guardian ad litem is to represent the interests of the child. A child fourteen (14) years of age or older is presumed capable of determining what is in his best interests. It is the duty of the guardian ad litem to represent the child's wishes in such cases. For children less than fourteen (14) years of age, the guardian ad litem shall decide as to the best interests of the child regardless of whether that determination reflects





the wishes of the child. However, the wishes of the child are always relevant to the determination of best interests and shall be weighed according to the competence and maturity of the child.

(2) Duties of the Guardian Ad Litem. The guardian ad litem shall perform the following duties: (When a child's attorney and a TCASA are appointed to represent a child together, each shall be jointly and severally responsible for discharging the duties:

a. Appear at all hearings to competently represent the interests of the child in proceedings before the Tribal Court.

b. Conduct an independent investigation, including interviewing the child, parents, county protective services Caseworkers, county social workers, school personnel, care providers, and other persons to properly ascertain the facts and circumstances underlying the allegation that the child is in-need-of-care within the jurisdiction of the Tribal Court.

c. Ascertain the interests of the child, taking into consideration the child's wishes according to the competence and maturity of the child.

d. Provide a written report of findings and recommendations to the Tribal Court at each hearing held before the Tribal Court.

e. Urge that specific and clear orders are entered for evaluation, assessment, services, and treatment for the child and his or her family.

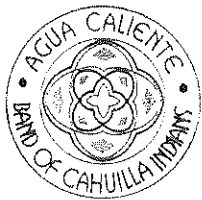
f. Monitor implementation of case plans and disposition orders to determine whether services ordered by the Tribal Court are actually provided, are provided in a timely manner, and are accomplishing their desired goal.

g. Inform the Tribal Court if the services are not being made available to the child and/or family, if the family fails to take advantage of such services, or if such services are not achieving their purposes.

h. Identify the common interests among the parties and, to the extent possible, act as a mediator to promote a voluntary, cooperative resolution of the matter and to avoid having to involve the Tribal Court.

i. Consult with other professionals liberally in identifying the child's interests, current and future placements, and necessary services.

j. Advocate for the interests of the child when related to the circumstances causing the child to come within the jurisdiction of the Tribal Court; and



k. Attend training programs as recommended and provided by the Tribal Court.

(4) Dismissal of Guardian Ad Litem. The Tribal Court may, in its discretion, dismiss a guardian ad litem after they are appointed, if the Tribal Court determines that the guardian ad litem will not or cannot meet their obligations to the child they represent and that their continued appointment will jeopardize the interests that they were appointed to represent.

(5) Confidentiality. All records, information, and reports prepared, acquired, or received or reviewed by Guardians ad litem (including TCASAs) are confidential and shall only be disclosed or dispersed pursuant to this Code or other Tribal law.

#### **Sec. 10.14.080. Criminal penalties.**

This code in no way interferes with or limits the state's right to prosecute any criminal case arising out of the same facts for which a protection order is sought. Further, the Tribal Court may refer cases filed under this title to the Riverside County District Attorney's office for prosecution, where appropriate.

#### **Sec. 10.14.090. Mandated reporting agency.**

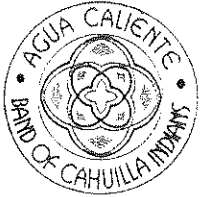
(a) In all cases that occur within the territory of the Tribe, where the alleged victim is a member or eligible for membership in the Tribe, the mandated reporting agency for suspected child abuse or neglect shall be the Tribal Family Services Department.

(b) Non-Tribal Cases. In all cases where the alleged victim is not a member of, or eligible for membership, the mandated reporting agency is the Family Services Department and the local county child protective services agency.

#### **Sec. 10.14.100. Mandated reporters.**

(a) Persons Specifically Required to Report. Those persons who are mandated to report suspected abuse or neglect, as defined under this code, include any physician, registered nurse, licensed practical nurse, community health representative, mental health professional, other health professional, dentist, optometrist, or law enforcement official; judge; attorney, except where it conflicts with attorney-client privilege; clerk of the Tribal Court; other judicial system official; any person who has assumed full or intermittent responsibility for the care or custody of a child; school principal, teacher or teacher's aide, social services caseworker, county or other social worker, administrators, supervisors, and any licensed staff of a residential care facility or group home, public or private facility that provides care or services for children; or employee of a county child protective services agency.

(b) Anonymous Reports. Any person, other than those specified in Subsection (a) above, may remain anonymous when making a report, except where either (1) the protection of the safety of



the child requires limited disclosure of the identity; or (2) the reporter consents to disclosure of his identity. The anonymous reporter has the right to petition the Tribal Court and be heard at a closed hearing with regard to the issue of disclosure. Where the Tribal Court declines to breach the reporter's anonymity, the Tribal Court record and any papers filed in connection with the hearing, will be sealed.

(c) Immunity from Liability. All persons or agencies reporting, in good faith, known or suspected instances of abuse or neglect will be immune from civil liability and criminal prosecution.

(d) Circumstances Mandating Report of Suspected Abuse or Neglect: abuse, abandonment, abduction, or neglect. Any mandated reporter who, in his professional capacity, or within the scope of his employment, has observed or has knowledge of an incident that reasonably appears to be abuse, abandonment, abduction, or neglect, or is told by a child that he has experienced this behavior, including an act or omission, constituting abuse, abandonment, abduction, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone immediately or as soon as practicably possible, and by written report sent within two working days to the mandated reporting agency specified in Section 10.14.090 above.

(e) Penalties for Failure to Report. 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 may be subject to immediate removal from their position and/or such other penalties including a fine not exceeding one thousand dollars (\$1,000) or if the failure to report is willful, a civil penalty not exceeding five thousand dollars (\$5,000), and any damages as may be allowed under Tribal law including proceedings in the form of a private civil action under this provision in Tribal Court.

(f) As used in this section, "suspected abuse or neglect of a child occurs when a person who is required to report under subdivision (a) observes or has knowledge of behavior or unusual circumstances or transactions, or a pattern of behavior or unusual circumstances or transactions, that would lead an individual with like training or experience, based on the same facts, to form a reasonable belief that a child is the victim of abuse or neglect, as defined in Chapter 10.02.

(g) Content of Reports. The written abuse reports required for the reporting of abuse or neglect shall contain the following items:

- (1) The name, address, telephone number, and occupation of the person reporting.
- (2) The name and address of the victim.
- (3) The date, time, and place of the incident.
- (4) Other details, including the reporter's observations and beliefs concerning the incident.



- (5) Any statement relating to the incident made by the victim.
- (6) The name of any individuals believed to have knowledge of the incident.
- (7) The name of the individuals believed to be responsible for the incident and their connection to the victim.

**Sec. 10.14.110. Tribal family service advocates and caseworkers.**

(a) Powers and Duties.

(1) Cooperation with Other Agencies. Tribal Family Services shall cooperate with such state, county, and community service agencies as may be necessary to achieve the purposes of this Code. Tribal Family Services may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification by the Tribal Council.

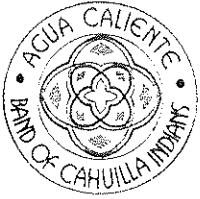
(2) Early Communication with Riverside County Department of Public Social Services Child Services Division (DPSS-CSD) or other child protective services agency regarding a referral received by DPSS-CSD or other agency reporting possible abuse or neglect involving an Indian child. Every effort should be made by Tribal Family Services to communicate with DPSS-CSD or other agency prior to DPSS-CSD or other agency completing its investigation, removing the Indian child, or initiating an action in state juvenile court. Consideration should be given to issuing notice to DPSS-CSD or other agency at the earliest possible time that the Tribe intends to detain the Indian child or initiate an out-of-custody child in need of care petition and assert the Tribe's concurrent jurisdiction. Early communication from DPSS-CSD to Tribal Family Services should be strongly encouraged as well.

(3) Quarterly Meetings with County Tribal Liaison. Tribal Family Services shall exercise its best efforts to meet with the Tribal Liaison for DPSS-CSD and the attorney for DPSS-CSD every quarter to ensure that lines of communication are timely, open, and effective. Opportunities to improve and expand communication between Tribal Family Services and DPSS-CSD should be constantly pursued in order to enhance the ability of Tribal Family Services to fulfill their duties and responsibilities under this Code.

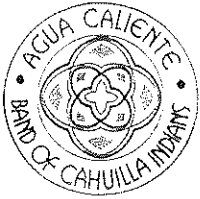
(4) Protocol. Caseworker shall:

a. Receive from any source, oral or written, information regarding a child who may be a child-in-need-of-care.

b. Upon receipt of any report or information under Section 10.14.110(a)(4)a, shall initiate a prompt and thorough investigation within twenty-four (24) hours 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.



- c. In conducting its investigation, the Caseworker shall seek the assistance of and cooperate with law enforcement officials within twenty-four (24) hours after becoming aware that one or more of the following conditions exist:
- i. Abuse or neglect is the suspected cause of a child's death.
  - ii. The child is the victim of suspected sexual abuse or sexual exploitation.
  - iii. Abuse or neglect resulting in severe physical, mental, or emotional injuries to the child which requires medical treatment or hospitalization. For purposes of this subsection, "severe physical injury" means brain damage, skull or bone fracture, subdural hematoma, dislocation, sprains, internal injuries, poisoning, burns, scalds, severe cuts, or any other visible physical injury that seriously impairs the health or physical well-being of a child.
  - iv. Law enforcement intervention is necessary for the protection of the child, the Caseworker, or another person involved in the investigation; or
  - v. Any alleged perpetrator of the child's injury is not a person responsible for the child's health or welfare.
- (5) Take a child into temporary custody, if necessary, pursuant to Section 10.14.140.
- (6) After investigation, assess the risk to the remaining children in the home, and all other facts or matters found to be pertinent.
- (7) Substantiate whether there is probable cause to believe that the child is a child-in-need-of-care.
- (8) Offer to the family of any child found to be a child-in-need-of-care appropriate services.
- (9) Within thirty (30) days after a referral of a potential child-in-need-of-care, submit a written report of his investigation and evaluation which shall be included in the files maintained by Tribal Family Services and shall include a determination as to whether the report was substantiated or unsubstantiated.
- (10) Following the investigation, develop a written case plan or Family Maintenance Plan as described in Section 10.14.170, in collaboration with the child, the child's parents, Indian custodian, guardian, and extended family and initiate implementation of the plan within sixty (60) days of the initial referral or removal.



(11) Take any other actions necessary to faithfully carry out their duties and responsibilities under this Code.

(b) Cooperation of Law Enforcement Officials. Law enforcement officials shall cooperate with the Caseworker and Tribal Family Services in conducting investigations pursuant to this Chapter.

(c) Substance Abuse by Pregnant Woman. If Tribal Family Services receives a report which alleges a pregnant woman's abuse of alcohol or a controlled substance, Tribal Family Services shall arrange an appropriate assessment and offer services indicated under the circumstances. Services offered may include, but are not limited to, a referral for chemical dependency assessment, a referral for chemical dependency treatment, if recommended, and a referral for parental care. Tribal Family Services also may seek Tribal Court ordered services under Section 10.14.120. Tribal Family Services shall seek Tribal Court ordered treatment under said Section 10.14.120 if the pregnant woman refuses recommended voluntary services or fails recommended treatment.

**Sec. 10.14.120. Drug/substance abuse during pregnancy.**

(a) Jurisdiction. The Tribal Court may take jurisdiction of a pregnant woman who has engaged in abuse of alcohol or a controlled substance upon a showing by a preponderance of the evidence that the woman is pregnant and abusing alcohol or controlled substance.

(b) Tribal Court Order. Upon asserting jurisdiction, the Tribal Court may enter orders regarding such person requiring her to refrain from substance abuse, submit to reasonable measures to ensure her nonuse, and comply with community based or inpatient treatment programs. Such Tribal Court orders may be enforced through the Tribal Court's civil contempt power.

(c) Privileged Information. Information made available pursuant to a Tribal Court order regarding a woman's drug/substance use during pregnancy may not be used in a criminal prosecution against the woman.

**Sec. 10.14.130. Central registry.**

(a) Tribal Family Services shall maintain a central registry of reports, investigations, and evaluations made under this Chapter. The registry shall contain the information furnished by Tribal personnel throughout the Reservation, including caseworkers and Tribal Family Service employees.

(b) 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 protect other siblings).



(c) Data and information in the central registry shall be confidential and shall be made available only with the approval of the Tribal Family Services Director and/or the Tribal Court. The ACLD, Tribal Programs, county child protective services personnel, child welfare services personnel, Public Health, and Law Enforcement agencies, licensed health practitioners, and health and educational programs or institutions licensed or regulated by the Tribe may be entitled to the records with the required approval. 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.

**Sec. 10.14.140. Investigation and emergency removal.**

(a) Investigative Orders: Orders for Examination. The Tribal Court may order investigation and discovery, including but not limited to, taking of photographs, gathering physical evidence, and examinations or evaluations of a child, parent, Indian custodian, or guardian conducted by a physician, dentist, psychologist, or psychiatrist, upon a showing of probable cause to believe that a child is a child-in-need-of-care, which may be done ex parte.

(b) Authority to Remove. If the Tribal Court finds probable cause to believe the child is a child-in-need-of-care, and that the conditions in which the child is found present a substantial risk of harm to the child's life, physical health or mental well-being, the Tribal Court may order the child be taken into custody, upon application by Tribal Family Services, which may be ex parte. The Tribal Court may include in such an order:

(1) An authorization to enter a specified premises to remove the child, gather evidence and

(2) To place the child in protective custody pending an initial detention hearing.

(c) Emergency Removal Without a Tribal Court Order. A child may be taken into protective custody without a Tribal Court order by a law enforcement officer or the Caseworker if such person has probable cause to believe the child is a child-in-need-of-care, and

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

(2) The parent, Indian custodian, or guardian is absent, and it appears, from the circumstances, that the child is unable to provide for his own basic necessities of life, and no satisfactory arrangements have been made by the parent, Indian custodian, or guardian to provide for such necessities and no alternative arrangements, except removal, are available to protect the child.

(d) Grounds for Removal Corrected. If grounds for emergency removal are corrected, the child may be returned to the parent, Indian custodian, or guardian by the person originally authorizing



removal or by the Caseworker regardless of whether a detention, jurisdiction, or disposition hearing is pending.

**Sec. 10.14.150. Notice of removal.**

(a) Notice to the ACLD and Tribal Court. After a child is removed from his home, actual notice to the ACLD and to the Tribal Court shall be made, by the removing person, no later than 12:00 o'clock noon the next Tribal Court working day.

(b) Notice to the Parent, Indian Custodian, or Guardian. The person removing the child shall make all reasonable efforts to notify the parents, Indian custodian, or guardian within twelve (12) hours of the child's removal. Reasonable efforts shall include personal, telephone, and written contacts at their residence, place of employment, or other location where the parent, Indian custodian, or guardian is known to frequent. If the parent, Indian custodian, or guardian cannot be found, notice shall be given to members of the extended family of the parent, Indian custodian, or guardian and/or the extended family of the child.

(c) Notice to Child's Tribe if Different than Agua Caliente Tribe. If the Tribal Court asserts emergency jurisdiction over a child who is a member of an Indian tribe other than the Agua Caliente Tribe, the Tribal Court shall notify the tribal court or other tribal official of the non-tribal member child over which jurisdiction has been asserted.

**Sec. 10.14.160. Placement of children.**

(a) Placement Priorities. The order for placement in foster care or a preadoptive placement shall generally comply with Section 10.12.070, in the absence of good cause to the contrary, as determined by the Tribal Court shall be:

- (1) A member of the Indian child's immediate family residing near the child's current home.
- (2) A member of the Indian child's extended family residing near the child's current home.
- (3) A member of the Indian child's immediate family.
- (4) A member of the Indian child's extended family.
- (5) A Member of the Tribe residing near the Indian child's current home.
- (6) A Member of the Tribe not residing near the Indian child's current home.





(7) A Tribally Approved Home licensed and specified by the Tribal Council pursuant to Chapter 10.22.

(8) An Indian family residing near the Indian child's current home.

(9) An Indian family.

(10) An institution for children approved by the Tribe or operated by an Indian organization, which has a program suitable to meet the Indian child's unique needs.

(11) Any other suitable placement which meets the standards for shelter care facilities established by Agua Caliente Tribal Council.

(b) Removal of the Alleged Perpetrator. If the alleged perpetrator is known and he resides in the home of the victim, such perpetrator may be ordered removed from the home.

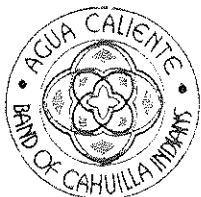
(c) Least Restrictive Setting. If the child cannot be returned to his parents, Indian custodian, or guardian, the child shall be placed in the least restrictive setting appropriate to the particular needs of the child. The child shall also be placed in reasonable proximity to his home if at all possible.

**Sec. 10.14.170. Informal conference and voluntary family maintenance plan resolution.**

(a) Cooperative Approach. It is the intent of this Code to strengthen the unity of the family by increasing the self-esteem and reinforcing the dignity of the members of the family. The Caseworker will assist family members in meeting goals through the provision of tools and skills available through social service and community providers. Wherever possible, the goals should be mutually agreed upon between the parent, Indian custodian, or guardian, the child (if of suitable age), and the Caseworker. Voluntary participation in available services is strongly encouraged and will be offered to the parent, Indian custodian, or guardian by the Caseworker whenever such approach will not endanger the health, safety, and welfare of the child.

(b) Voluntary Participation. Where the investigation of the allegations is inconclusive or unsubstantiated, but the parent, Indian custodian, or guardian willingly seeks assistance, or where the results of the investigation provide a reasonable suspicion that the abuse, neglect, or abandonment occurred, but did not rise to the level requiring the removal of the child from the home, the Caseworker may enter into a written agreement (Family Maintenance Plan) with the parent, Indian custodian, or guardian instead of filing a Child in Need of Care Petition with the Tribal Court.

(c) Voluntary Placement of Child Outside the Home. As part of the voluntary agreement, the parent, Indian custodian, or guardian may voluntarily place the child outside the home.



(d) Contents of Family Maintenance Plan. The agreement must be signed by the parent, Indian custodian, or guardian, and the Caseworker and must include the following:

(1) A written explanation of the voluntary participation process. The length of the program cannot continue for longer than one year, except on a finding of good cause by the Tribal Court and excluding any waiting period for acceptance into a program that is not the result of the parent, Indian custodian, or guardian's failure to act. Successful completion of the plan will result in the closure of the current case without the filing of a Child in Need of Care Petition.

(2) A notice that the unsuccessful completion of the Family Maintenance Plan will result in the filing of a Child in Need of Care Petition.

(3) A listing of the mutually agreed upon goals to be accomplished by the parent, Indian custodian, or guardian in order to successfully complete the Family Maintenance Plan.

(4) A time estimate for the completion of the goals, provided by the parent, Indian Custodian, or guardian, but not to exceed one (1) year (excluding any wait for entry into a program).

(5) A statement of where the child will be residing for the duration of the parent, Indian custodian, or guardian's voluntary assistance participation; and

(6) A statement of what non-compliant actions of the parent, Indian custodian, or guardian will terminate the agreement and result in the filing of a petition, including, but not limited to, the number of appointments or meetings missed; the number of positive substance abuse tests; the failure to complete goals in a timely manner; and any substantiated reports or new abuse, neglect, or abandonment allegations.

(e) Disqualification.

(1) Child Removed from Home. The parent, Indian custodian, or guardian is excluded from the option of an Informal Conference and Family Maintenance Plan where the child has been removed from his home on an emergency basis due to an immediate threat to his health or safety, unless all the following occur:

a. The Caseworker specifically recommends an informal conference; and

b. The parent, Indian custodian, or guardian agrees to voluntarily place the child outside the home, with the understanding that the parent's attempt to regain custody prior to the completion of the Family Maintenance Plan will result in the immediate filing of a petition by Tribal Family Services and a request that the child be ordered by the Tribal



Court into the care, custody, and control of Tribal Family Services, or into a specific out of home placement; and

c. The Tribal Court finds that the child's safety will not be jeopardized by the Family Maintenance Plan and voluntary receipt of services, and the Tribal Court includes the reasons for such a finding in a written order; and

d. The Tribal Court finds that the Family Maintenance Plan and voluntary receipt of services by the parent, Indian custodian, or guardian is in the child's best interests and includes the reasons for such a finding in a written order.

(f) Nature of Allegations. No Family Maintenance Plan Agreement may be offered when any of the following allegations are substantiated by the Tribal Family Services investigation:

- (1) The act of abuse or neglect resulted in serious bodily injury to the child; or
- (2) A deadly weapon was used to accomplish the act of abuse; or
- (3) The act of abuse or neglect was committed to gratify the abuser's desire for pleasure or excitement, including any pleasure or excitement caused by the infliction of pain on the victim; or
- (4) The act of abuse or neglect was committed with exceptional cruelty or caused exceptional pain, regardless of the presence or absence of a serious bodily injury; or
- (5) The act of abuse was sexual in nature.

(g) Termination of Voluntary Agreement.

(1) Termination by Parent. The parent, Indian custodian, or guardian can terminate the agreement by stating in writing that he no longer wishes to participate.

(2) Termination by Tribal Family Services. Tribal Family Services can only terminate the agreement by stating in writing the cause for the termination and the effective date of the termination. The parent, Indian custodian, or guardian, and ACLD must be provided with a copy of the termination notice prior to the termination becoming effective.

(h) Required Notice of Consequence of Termination. If the termination of the agreement may result in the filing of a Child in Need of Care Petition, or the adjudication of a previously filed petition, Tribal Family Services must advise the parent, Indian custodian, or guardian of these possibilities.



**Sec. 10.14.180. Filing child in need of care petition.**

(a) Authorization to File Petition.

(1) Who May File. Any person may file a complaint with the Caseworker, the ACLD, or law enforcement alleging that the child is a child-in-need-of-care.

(2) Formal Proceedings. The ACLD or the Caseworker may initiate formal child protection proceedings by filing a child in need of care petition in the Tribal Court on behalf of the Tribe and in the best interests of the child.

(3) Emergency Action Not Precluded. Nothing in this Section shall preclude law enforcement or Tribal Family Services personnel from taking emergency action under Section 10.14.140 of this Chapter.

(b) Time Limitations. If a child has been removed from the home, then a petition shall be filed with the Tribal Court within three (3) working days.

(c) Contents of Petition. The petition shall set forth the following with specificity:

(1) The full name, current gender, date and place of birth, residence, and tribal affiliation of the child.

(2) The basis for the Tribal Court's jurisdiction.

(3) The specific allegations which cause the child to be a child-in-need-of-care.

(4) A plain and concise statement of the facts upon which the allegations of child-in-need-of-care are based, including the date, time, and location at which the alleged facts occurred.

(5) The names, addresses, and tribal affiliation of the child's parents, Indian custodians, or guardians, if known.

(6) The names, relationship and addresses of all known members of the child's extended family and all former caregivers, if known; and

(7) If the child is placed outside of the home, the agency with whom the child is placed, the facts necessitating the placement, and the date and time of the placement.

**Sec. 10.14.190. Service of summons, notices of hearings, subpoenas and notice to putative fathers.**



(a) General. A party shall be given notice of a proceeding in the Tribal Court in any manner authorized by this Chapter or the Rules of Tribal Court unless a party must be served by summons as provided below.

(b) Service. The summons shall be issued and served on the parent, Indian custodian, or guardian, and the person with whom the child resides, if other than a parent, Indian custodian, or guardian, directing such person to appear with the child for trial or other proceeding. The Tribal Court may direct that the child's appearance in Tribal Court is unnecessary. If the parent, Indian custodian, or guardian cannot be found, notice shall be given to members of the extended family of the parent, Indian custodian, or guardian and/or the extended family of the child.

(c) Contents of Summons. The summons shall direct the person to whom it is addressed to appear with the child, unless the child's appearance has been excused, at a time and place specified by the Tribal Court and must:

(1) Identify the nature of proceeding.

(2) Include prominent notice that the proceedings could result in termination of parental rights.

(3) Have a copy of the petition attached to the summons.

(d) Manner of Serving Summons. A summons shall be served as follows:

(1) Personal Service. A summons required under this Section must be served by personally delivering the summons to the party.

(2) Service by Mail. If personal service of the summons is impractical or cannot be achieved, the Tribal Court may direct that it be served by registered or certified mail to the last known address of the party, return receipt requested, and restricted to the addressee.

(3) Substituted Service. The Tribal Court may direct any manner of substituted service if the Tribal Court finds that service cannot be made because the whereabouts of the person to be summoned has not been determined after reasonable effort or that the person is avoiding service.

(e) Time of Service. A summons shall be served as follows:

(1) Personal Service: Seven (7) days before disposition, fourteen (14) days before a hearing on a petition to terminate parental rights.

(2) Certified or Registered Mail. Fourteen (14) days before a disposition, twenty-one (21) days before a hearing on a petition to terminate parental rights.



(f) Notice of Hearing.

(1) Persons Entitled to Notice. The Tribal Court shall ensure that the following persons are notified of each hearing:

- a. The parent or parents.
- b. The attorney for the parents.
- c. The child or TCASA for the child.
- d. The Indian custodian or guardian, other than the parent, if any.
- e. The Caseworker.
- f. The attorney for the Tribal Family Services Department.
- g. The foster care agency.
- h. The guardian ad litem; and
- i. Any other party the Tribal Court may direct to be notified, including the DPSS-CSD caseworker and/or the attorney for County CSD or other agency as appropriate.

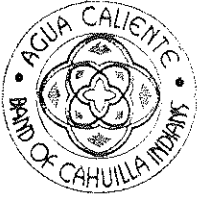
(2) General. Notice of hearing must be given in writing which may be on the record or mailed to the last known address at least seven (7) days prior to the hearing.

(3) Initial Detention Hearing. Reasonable efforts shall be made to notify the parents of the child or extended family as soon as the detention hearing is scheduled, and the notice may be in person, in writing, on the record, or by telephone.

(4) Termination of Parental Rights Proceedings. Notice of a hearing on a petition to terminate parental rights must be given in writing or be on the record at least fourteen (14) days before the hearing.

(5) Failure to Appear. When a party fails to appear in response to a notice of hearing, the Tribal Court may order the party's appearance by summons or subpoena.

(g) Subpoenas. The attorney for a party or the Tribal Court on its own motion, may cause a subpoena to be served on a person whose testimony or appearance is desired.



(h) Waiver of Service. A person may waive notice of hearing or service of process. The waiver shall be in writing or may be on the record before the Tribal Court.

(i) Subsequent Notices. After a party's first appearance before the Tribal Court, subsequent notice of proceedings and pleadings shall be served on that party or, if the party has an attorney, on the attorney, by personal service or mail. If the parties' consent, electronic service may be used in lieu of personal service or service by mail. A summons must be served before a trial or termination hearing as provided by this Code unless a prior Tribal Court appearance of the party in the case was in response to service by summons.

(j) Putative Fathers. If the Tribal Court determines that the child has no father, the Tribal Court shall take appropriate action as follows:

(1) Initial Testimony. The Tribal Court shall take initial testimony on the tentative identity and address of the biological father. If the Tribal Court finds probable cause to believe that an identifiable person is the biological father of the child, the Tribal Court shall direct that notice be served on that person in the manner as provided in this Section. The notice shall include the following information:

a. That a petition has been filed with the Tribal Court.

b. The time and place of hearing at which the biological father is to appear to express his interest, if any, in the child; and

c. A statement that failure to attend the hearing will constitute a denial of interest in the child, a waiver of notice for all subsequent hearings, and could result in termination of any parental rights.

(2) Hearing. After notice to the putative father, the Tribal Court may conduct a hearing and determine that:

a. The putative father has been personally served or served in some other manner which the Tribal Court finds reasonably calculated to provide notice to the putative father. If so, the Tribal Court may proceed in the absence of the putative father; and

b. Clear and convincing evidence establishes that the putative father is the biological father of the child; or

c. There is probable cause to believe that another identifiable person is the biological father of the child. If so, the Tribal Court shall proceed with respect to the other person in accord with this Section; or



d. After diligent inquiry, if the identity of the biological father cannot be determined, the Tribal Court shall terminate the parental rights of the unknown father and proceed without further notice for the unidentified person.

(3) Waiver of Rights. The Tribal Court may find that the biological father waives all rights to further notice, including the right to notice of termination of parental rights if:

- a. He fails to appear after proper notice, or
- b. He appears but fails to establish paternity within the time set by the Tribal Court.

#### **Sec. 10.14.200. Initial detention hearing.**

(a) Child Released to Parent. If the child has been released to his parent, Indian custodian, or guardian, the Tribal Court shall conduct an initial detention hearing within seven (7) working days after the filing of the petition to determine whether probable cause exists to believe that the child is a child-in-need-of-care.

(b) Child Placed Out of Home. If the child is placed out-of-home, the Tribal Court shall conduct an initial detention hearing within three (3) working days after the filing of the petition to determine:

(1) Whether probable cause exists to believe that the child is a child-in-need-of-care; and

(2) Whether the home conditions continue to present a substantial risk of harm to the child's life, physical health, emotional or mental well-being; and

(3) Whether any alternative, except removal of the child, is reasonably available to adequately safeguard the child from such risk.

(c) Parent, Indian Custodian, or Guardian Not Present. If the child's parent, Indian custodian, or guardian is not present at the initial detention hearing, the Tribal Court shall make an inquiry into what efforts have been made to notify and to obtain the presence of the parent, Indian custodian, or guardian. If it appears that further efforts are likely to produce the child's parent, Indian custodian, or guardian, the Tribal Court shall recess for not more than twenty-four (24) hours, or the next Tribal Court working day and direct the petitioner to make continued efforts to obtain the presence of the child's parent, Indian custodian, or guardian. The hearing may be conducted in the parent's absence.

(d) Procedure. The Tribal Court shall:





(1) Read the allegations in the petition in open court, unless the reading of the allegation is waived by the parent, Indian custodian, or guardian.

(2) Advise the parent, Indian custodian, or guardian of the right to have counsel represent them, at their own expense.

(3) Advise the parent, Indian custodian, or guardian, of their right to a trial on the allegations in the petition.

(4) Advise the parent, Indian custodian, or guardian of their right to be present at trial.

(5) Advise the parent, Indian custodian, or guardian of their right to testify, present evidence, call witnesses, and ask questions of all witnesses.

(6) Appoint a guardian ad litem for the child, if appropriate.

(e) Establishing Probable Cause. The Tribal Court, in determining whether probable cause exists to believe that the child is a child-in-need-of-care, shall hear testimony concerning:

(1) The circumstances that gave rise to the petition; and

(2) The need for placement or continued placement.

(f) Probable Cause Not Found. If probable cause to believe that the child is a child-in-need-of-care is not found, the Tribal Court shall dismiss the petition and the child shall be released.

(g) Probable Cause Found. If the Tribal Court finds that probable cause exists to believe that the child is a child-in-need-of-care, the Tribal Court:

(1) Shall order the parent, Indian custodian, or guardian to appear at a determination hearing on a date and time set by the Tribal Court; and

(2) May release the child to the custody of either of the child's parents, Indian custodian, or guardian under such reasonable terms and conditions as are necessary for either the physical, emotional, or mental well-being of the child; or

(3) May order placement of the child with someone other than a parent, Indian custodian, or guardian, if the Tribal Court, after hearing, determines that both of the following conditions exist:

a. Custody of the child with a parent, Indian custodian, or guardian presents a substantial risk of harm to the child's life, physical health, emotional or mental well-being,



and no provision of services or other arrangement except removal of the child, is reasonably available to adequately safeguard the child from such risk; and

b. Conditions of custody of the child away from a parent, Indian custodian, or guardian are adequate to safeguard the child's health and welfare.

(h) Tribal Court Ordered Evaluations and Assessments. The Tribal Court may at any time after conducting an initial detention hearing at which probable cause to proceed upon a petition is found, order any involved child, parent, Indian custodian, or guardian or any family member or extended family member, who may be a part of the problem or part of the solution, to undergo a criminal background check, a physical, mental, psychological or substance abuse evaluation or assessment by a qualified professional at the cost of the Tribal Family Services Department.

**Sec. 10.14.210. Determination (jurisdiction) hearing.**

(a) Purpose. The Tribal Court shall conduct a determination (jurisdiction) hearing for the purpose of determining whether the child is a child-in-need-of-care.

(b) Commencement. The determination hearing shall commence as soon as possible but not later than forty-five (45) days after the petition is filed with the Tribal Court.

(c) Continuances. Continuances of a determination hearing may be granted by the Tribal Court but only for one of the following reasons:

- (1) Upon stipulation of the parties.
- (2) When the hearing cannot be completed.
- (3) Where the Tribal Court finds that the testimony of a presently unavailable witness is needed.
- (4) Where a parent, Indian custodian, or guardian requests an opportunity to obtain legal counsel (one time only for up to fourteen (14) days); or
- (5) For good cause shown or in the discretion of the Tribal Court.

(d) Closed Proceedings. The general public shall be excluded from the proceedings and only the parties, their counsel, witnesses, the TCASA, and other persons determined necessary or useful to the proceedings by the Tribal Court, shall be admitted.

(e) Evidence.



(1) Formal Rules Do Not Apply. The formal rules of evidence shall not apply at these proceedings. All relevant and material evidence which is reliable and trustworthy may be admitted at the trial and may be relied upon by the Tribal Court to the extent of its probative value.

(2) Cross-examination. The parties shall be afforded an opportunity to examine and controvert written reports received by the Tribal Court and shall be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.

(3) Technological Devices. The Tribal Court, in its discretion, may rely upon technological devices that further the likelihood of appearance and participation of the parties and other persons determined necessary or useful to the proceedings by the Tribal Court.

(f) Burden of Proof. The Tribe has the burden of proving the allegations in the petition by a preponderance of the evidence. If the Tribal Court finds that the Tribe met its burden of proof, the Tribal Court shall find the child to be a child-in-need-of-care, under the jurisdiction of the Tribal Court, and make the child a temporary ward of the Tribal Court.

(g) Allegations Not Sustained. If the allegations of the petition are not sustained, the Tribal Court shall dismiss the matter and release the child.

#### **Sec. 10.14.220. Disposition hearing.**

(a) Purpose. A disposition hearing is conducted to determine measures to be taken by the Tribal Court with respect to:

- (1) A child properly within its jurisdiction.
- (2) Any adult, once the Tribal Court has determined following trial (determination), that the child comes within its jurisdiction.

(b) Disposition Immediately Following Determination. A disposition hearing may be had immediately after the determination. The interval, if any, between the determination and the disposition, is within the discretion of the Tribal Court.

(1) Child in Placement. When the child is in placement, the interval may not be more than thirty-five (35) days except for good cause.

(2) Notice. If the disposition hearing is not held immediately after the determination hearing, notice of hearing may be given by scheduling it on the record in the presence of the parties or in accordance with Section 10.14.190(f)(2).



(c) Proposed Case Service Plan. Tribal Family Services shall prepare a written report describing all reasonable and appropriate alternative dispositions, including reports of the Caseworker. The report shall contain a specific plan for the care of and assistance to, the child, the child's parent, Indian custodian, or guardian designed to resolve the problems presented in the petition.

(1) Detailed Explanation. The report shall contain a detailed explanation of the necessity for the proposed disposition plan and its benefits to the child.

(2) Specific Reasons Underlying Placement Recommendation. If the report recommends placement of the child somewhere other than with the child's parent, Indian custodian, or guardian, it shall state the specific reasons underlying its placement recommendation.

(3) Due Date. Tribal Family Services shall present the case plan to the Tribal Court, the TCASA, and the ACLD, at least five (5) working days, including service on the parties and their counsel, before the disposition hearing.

(4) Review Prior to Hearing. The report shall be reviewed by all the parties and their representatives prior to the commencement of the disposition hearing.

(d) Evidence. All relevant and material evidence, including oral and written reports may be received and may be relied on to the extent of their probative value, even though such evidence may not be admissible at trial. The Tribal Court shall consider the case service plan and any report by an agency responsible for the care and supervision of the child, concerning efforts to prevent removal, or to rectify conditions that caused removal of the child from the home.

(1) Cross-Examination. The parties shall be given an opportunity to examine and controvert written reports so received and may be allowed to cross-examine individuals making reports when such individuals are reasonably available.

(2) Technological Devices. The Tribal Court, in its discretion, may adopt rules regarding the use technological devices that further the likelihood of appearance and participation of the parties and other persons determined necessary or useful to the proceedings by the Tribal Court.

(3) No Assertion of Privilege. No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the disposition, of materials prepared pursuant to a Tribal Court ordered examination, evaluation, assessment, interview, or course of treatment.

(e) Disposition Orders.



(1) Order of Disposition. The Tribal Court shall enter an order of disposition after considering the case service plan and other evidence bearing on disposition. The Tribal Court shall approve a case service plan and may order compliance with all or part of the case service plan and may enter such orders as it considers necessary in the best interests of the child. The order of disposition shall state whether reasonable efforts have been made to prevent the child's removal from his home or to rectify the conditions that caused the child's removal from his home.

(2) Disposition Priorities. If a child has been found to be a child-in-need-of-care, the Tribal Court may make the following dispositions which are listed by priority:

- a. Permit the child to remain with his parent(s), Indian custodian, or guardian subject to such conditions as the Tribal Court may prescribe.
- b. Place the child outside the home in accordance with the placement preferences set forth in Section 10.14.160 (a), subject to such conditions as the Tribal Court may prescribe.
- c. Place the child in a Tribally Approved Home licensed and specified by the Agua Caliente Tribal Family Services, subject to such conditions as the Tribal Court may prescribe.
- d. Other dispositions as the Tribal Court may prescribe.
- e. Order the ACLD to file a petition to terminate parental rights under this Code.
- (f) The Tribal Court may, in its discretion, issue an order requiring a Tribal Member parent to pay for the support of his minor child or children during the pendency of child protection or child custody proceedings. "Support" for purposes of this provision includes, but is not limited to, (1) payments made for foster care of the child; (2) payments made for the cost of care, placement, and services provided by Tribal Family Services; and (3) payments made for children placed with relatives or friends who are not eligible for foster care payments or payments are not sufficient to cover the cost of caring for the children.

Where support is ordered to be paid, the Tribal Court shall forward an order to the Tribal Finance Department directing payments be made on a month-to-month basis from per capita distribution until modification or termination of the order is made and delivered to the Tribal Finance Department.

(g) Amendments. If a child remains under the jurisdiction of the Tribal Court, an order may be amended or supplemented at any time, as the Tribal Court considers necessary and proper.



**Sec. 10.14.230. Status review hearings.**

(a) Status Review Hearings Before Disposition. The Tribal Court, in its discretion, may hold one or more status review hearings prior to the Disposition Hearing.

(b) Review. The disposition order is to be reviewed at the discretion of the Tribal Court but at least once every six (6) months at a status review hearing.

(c) Notice of Review. Notice of the status review hearing shall be provided on the record, by personal service, or by ordinary mail as provided in Section 10.14.190(f).

(d) Scope of Review. At a status review hearing the Tribal Court shall review, on the record, the compliance with the case service plan prepared pursuant to Section 10.14.220(c) and the previous orders of the Tribal Court, including:

(1) Services. Compliance with the case service plan with respect to services provided to the child and his parent, Indian custodian, or guardian and whether the parent, Indian custodian, or guardian has complied with and benefited from those services.

(2) Visitation. Compliance with the case service plan with respect to visitation with the child. If visitation did not occur or was infrequent, the Tribal Court shall determine why visitation did not occur or was infrequent.

(3) Other Provisions. The extent to which the parent complied with each provision of the case service plan, prior Tribal Court orders, and any agreement between the parent and the agency.

(4) Continued Separation. Likely harm to the child if the child continues to be separated from his parent, Indian custodian, or guardian.

(5) Reunification. Likely harm to the child if the child is returned to his parent, Indian custodian, or guardian.

(e) Extent of Progress. After review of the case service plan, the Tribal Court shall determine the extent of progress made toward alleviating or mitigating the conditions that caused the child to become and to remain a child-in-need-of-care. The Tribal Court may modify any part of the case plan including, but not limited to, the following:

(1) Additional Services. Prescribing additional services that are necessary to rectify the conditions that caused the child to become or to remain a child-in-need-of-care.



(2) Additional Actions. Prescribing additional actions to be taken by the parent, Indian custodian, or guardian to rectify the conditions that caused the child to become or to remain a child-in-need-of-care.

(f) Continued Placement. At a status review hearing, the Tribal Court shall determine the continuing necessity and appropriateness of the child's placement. The Tribal Court may continue the placement, order the return of the child to the parent, Indian custodian, or guardian, continue the original disposition order, modify the disposition order, or enter a new disposition order.

(g) If the Child Remains in Placement. If the child remains in placement, the Tribal Court shall determine at the disposition hearing and at each review hearing whether the case should be reviewed before the next review hearing required under this Section. In making this determination, the Tribal Court shall consider, but not be limited to, both of the following:

(1) Parent's Motivation. The parent's, Indian custodian's, or guardian's motivation to make necessary changes to provide a suitable environment for the child.

(2) Possibility of Early Return Home. Whether there is a reasonable likelihood that the child may be returned to his home prior to the next review hearing.

(h) Return Without Hearing. If not less than seven (7) days' notice is given to all parties prior to the return of a child to his home, and no party requests a hearing within the seven (7) days, the Tribal Court may issue an order without a hearing permitting the child to return to his home.

(i) Return Upon Waiver and Consent. If all parties waive notice of hearing and consent to the return of the child to his home, the Tribal Court may issue an order without a hearing permitting the child to return to his home.

(j) Tribal Family Services Report. A report shall be filed with the Tribal Court by Tribal Family Services at least seven (7) working days prior to the hearing and copies provided to all parties or their representatives. The report shall be offered into evidence.

#### **Sec. 10.14.240. Permanency hearings.**

(a) Timetable. If a child remains adjudicated a child-in-need-of-care and parental rights have not been terminated, the Tribal Court shall conduct a permanency planning hearing not more than twelve (12) months after entry of the order of disposition and every twelve (12) months thereafter or as otherwise ordered by the Tribal Court, so long as the child remains a child-in-need-of-care. A permanency planning hearing may be combined with a disposition hearing under Section 10.14.220.



(b) **Scope of Review.** A permanency planning hearing shall be conducted to review the status of the child and the progress made toward the child's return to his parent, Indian custodian, or guardian, or to some other permanent home.

(c) **Parental Rights Not Terminated.** The Tribal Court shall order the child returned to his parent, Indian custodian, or guardian if parental rights of the child have not been terminated and the Tribal Court determines that the return of the child would not cause a substantial risk of harm to the child's life, physical health, or mental well-being. The Tribal Court shall view the failure of the parent, Indian custodian, or guardian to substantially comply with the terms and conditions of the case service plan and disposition orders of the Tribal Court as evidence that return of the child to his parent, Indian custodian, or guardian would cause a substantial risk of harm to the child's life, physical health, emotional or mental well-being.

(d) **Alternative Permanent Placement Plans.** If the Tribal Court determines at a permanency planning hearing that the child should not be returned to his parent, Indian custodian, or guardian, Tribal Family Services shall propose one of the following alternative permanent placement plans:

(1) That the child be placed permanently with a person in order of preference as set forth in Section 10.14.160 or a person designated by the child's parent or approved by the Tribal Family Services Department.

(2) That the child remains in long-term foster care.

(3) That a petition for guardianship under this Code be filed by the current caretaker of the child, the child, or Tribal Family Services; or

(4) That a petition to terminate parental rights under this Code be filed by Tribal Family Services.

(5) Any other permanency placement alternative under this Code.

(e) **Tribal Court's Options.** If the Tribal Court determines that the child should not be returned to his parent, Indian custodian, or guardian because efforts to reunite the child with the parent, Indian custodian, or guardian have been exhausted and the return is not in the child's best interests, the Tribal Court may order permanent placement with a relative, long-term foster care under subdivision (d)(1), (2), or (3) or continue the child in placement for a limited period so that petitions under Subsection (d)(3) or (4) may be filed, or any other permanency plan alternative under this Code.

#### **Sec. 10.14.250. Voluntary termination of parental rights.**

(a) **Consent to Relinquishment or Termination of Parental Rights**





(1) The Tribal Court may accept a voluntary consent to termination (relinquishment) of parental rights if the parent personally appears at the hearing and gives his consent to the termination of his parental rights. The Tribal Court may accept the consent only after the Tribal Court has explained the effect of termination of parental rights, has questioned the parent, and is satisfied that the consent is informed and voluntary.

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

(3) The Tribal Court may, on request of the parent, unless good cause to the contrary is shown, admit testimony on the record by telephone or live audiovisual means.

(4) Consent shall include the date and time and shall positively identify the party giving the consent and the child to whose adoption the consent is given.

(5) The consent shall designate either of the following:

a. Any other person authorized by the person giving the consent to place the child for adoption.

b. Any particular person or persons authorized to adopt the child by the person giving the consent.

(6) In any proceeding to terminate parental rights voluntarily wherein a guardian ad litem has been appointed by the Tribal Court, if the guardian ad litem has reason to doubt the capacity of the parent to give informed and voluntary consent to the termination, he shall so inform the Tribal Court. If the Tribal Court finds that the parent is incapable of knowingly and voluntarily consenting to the termination of parental rights, it shall dismiss the proceedings without prejudice.

(b) Any consent given for the termination of parental rights to a child may be withdrawn at any time prior to the entry of a final order of termination as the case may be and the child shall be returned to the parent if so ordered by the Tribal Court.

(c) Written consent cannot be withdrawn after the entry of a final order of termination of parental rights. Consent may be withdrawn prior to the entry of the final order upon showing a preponderance of evidence at a hearing before the Tribal Court that consent was obtained by fraud, duress, or coercion, or the best interests of the child require the consent to be voided.



(c) The Tribal Court shall not grant permission to withdraw consent unless it finds that the best interests of the child will be served by such withdrawal. The entry of an order of termination of parental rights renders any consent irrevocable.

**Sec. 10.14.260. Modification of parental rights.**

A party may file a Petition for Modification of Parental Rights, instead of a Petition for Termination of Parental Rights, provided all of the requirements for filing a Petition for Termination of Parental Rights have been followed. The Tribal Court has the discretion, if compelling reasons exist on a case-by-case basis, to order modification of parental rights, instead of full termination of parental rights, upon hearing either a Petition for Termination of Parental Rights or a Petition for Modification of Parental Rights.

**Sec. 10.14.270. Involuntary termination of parental rights.**

(a) Purpose. This Section shall be construed consistent with this Code and the rights of the parties, and every effort shall be made to ensure that termination of parental rights may be used only as a last resort when all prior actions have failed to avoid separation. The decision to proceed under this Section must be based on a finding that it is in the best interests of the child and Tribe. When moving to terminate parental rights, Tribal Family Services shall document in the child's case plan whether the preservation and continuation of tribal customs and practice of tribal families constitutes a compelling reason not to terminate a parent's rights and whether termination of parental rights is in the best interests of the child and the Tribe. In such cases where a compelling reason exists not to terminate parental rights, Family Services may recommend, and the Tribal Court may order, modification of parental rights or another permanent plan.

(b) The Tribal Court may decree a permanent termination of parental rights as provided herein concerning a child for whom the jurisdiction of the Tribal Court has been asserted under this Code. The rights of one parent may be terminated without affecting the rights of the other.

(c) A Petition for Termination of Parental Rights shall be filed with the Tribal Court as set forth in this Section.

(d) Grounds for Involuntary Termination of Parental Rights. The Tribal Court may terminate the parental rights to a child without the parent's consent only if the Tribal Court finds and determines that one or more of the following circumstances are present:

(1) Abandonment. The child has been abandoned as defined herein.

(2) Physical or Severe Emotional Injuries. Willful and repeated physical and or severe emotional injuries of the child by the parent(s); or that the parent(s) knew that another individual willfully caused physical or severe emotional injuries and failed to remove the child from the



abusive situation, to ask law enforcement to remove the individual, or to take other steps to protect the child.

(3) Sexual Abuse. Willful and severe or repeated acts of sexual abuse or sexual exploitation by the parent or parents or that the parent(s) knew that another individual willfully and severely or repeatedly caused acts of sexual abuse or sexual exploitation and failed to remove the child from the depraved situation and/or to ask law enforcement to remove the individual.

(4) Emotional Harm. The return of the child may result in serious permanent emotional damage as supported by the best evidence available.

(5) Severe Neglect. Pervasive and uncorrectable failure or refusal to provide proper or necessary subsistence, education, medical care, shelter, a safe environment, or any other necessary care for the child's health, guidance, or well-being.

(6) Domestic or Family Violence. There is a severe continuing pattern of domestic or family violence taking place in the presence of the child.

(7) Other Aggravated Circumstances as Determined by the Tribal Court. For example, where the parent has committed murder or voluntary manslaughter of another child; a parent or guardian has aided or abetted, attempted to conspire, solicit commission of a murder or voluntary manslaughter of a child; the parental rights of the parent with respect to a sibling have been terminated involuntarily; the parent has abandoned an infant; the parent has committed a felony assault that results in serious bodily injury to the child or another child; or finds that the parent has subjected the child to other aggravated circumstances as determined by the Tribal Court.

(8) Decisions to Terminate Parental Rights. Decisions to terminate a parent's legal and custodial right to his child shall be made on a case-by-case basis.

(e) Pre-Filing Requirements. A petitioner seeking involuntary termination of the parent-child relationship must establish the following:

(1) The child has been declared to be under the jurisdiction of the Tribal Court under this Code or a dependent of a state juvenile court for at least a consecutive one (1) year period of time and has been removed from his parent at the time of this modification hearing for a cumulative period of fifteen (15) of the previous twenty-two (22) months.

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



(3) Tribal Family Services has engaged in active efforts to offer or provide all Tribal Court ordered services that are reasonably available in the community, and which are capable of helping the parent resolve his underlying problem(s).

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

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

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

(f) Who May File a Petition for Termination of Parental Rights. A Petition may be filed by:

(1) Either parent when termination is sought with respect to the other parent.

(2) A Caseworker.

(3) A parent seeking voluntary termination of his parental rights.

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

(g) Contents of the Termination of Parental Rights Petition. The Petition for Termination or Modification of Parental Rights shall include the following to the best information and belief of the petitioner:

(1) The name, place of residence, and tribal affiliation of the petitioner (if other than an authorized Tribal representative).

(2) The full name, current gender, date and place of birth, residence, and tribal affiliation of the child.

(3) The basis for the Tribal Court's jurisdiction.

(4) State the relationship of the petitioner to the child, or the fact that no relationship exists.

(5) The names, addresses, tribal affiliation, and dates of birth of the child's parents.



(6) If the child's parent(s) is a minor, the names and addresses of the parents' parents, Indian custodian, or guardian; and if such parent has no parent, Indian custodian, or guardian, the members of such parent's extended family.

(7) The name and address of the person or agency having legal or temporary custody of the child.

(8) The grounds on which the termination or modification is sought under this Chapter.

(9) A statement that the pre-filing requirements set forth above have been met; and

(10) A list of the assets of the child together with a statement of the value thereof.

When any of the facts required by this section are unknown, the Petition shall so state. The petitioner must sign and date the petition.

(h) Notice. After a petition for the involuntary termination or modification of parental rights has been filed, the Tribal Court shall set the time and place for hearing and shall cause written notice of the date, time, and place of the hearing, and consequences of a modification. Notice shall be given to the child if ten (10) years of age or older, the child's representative, petitioner, the parents, any Indian custodian, or guardian, the person having legal or temporary custody of the child, the child's extended family, and any representative of record in the action as determined by the Tribal Court. If the child's parent is a minor, notice shall also be given to that parent's parents, Indian custodian, or guardian of the person unless the Tribal Court is satisfied, in exercise of its discretion, that such notice is not in the best interest of the parent and that it would serve no useful purpose.

Notice of the hearing and the right to be heard shall also be issued to foster parents, if any, pre-adoptive parents, or relatives providing care for the child except that this paragraph shall not be construed to require any foster parent or relative providing care to be made a party to the action solely on the basis of such notice.

(i) Service. Notice shall be given by personal service. If service cannot be made personally, the Tribal Court may authorize service by registered mail at the last known address of the person to be served. All notices served whether personally or by registered mail shall be received by the person named therein no less than fourteen (14) days prior to the date set for the hearing. Notice shall include a copy of the petition.

(j) Waiver. Notice and appearance may be waived by a parent in writing before the Tribal Court, or in the presence of and witnessed by a clerk of the Tribal Court, provided that such parent has been apprised of the meaning and consequences of the modification of parental rights action, including that the modification could allow an adoption to go forward. A parent who has been duly notified of a hearing and fails to appear does not need to provide a signed waiver under this Section.



Any 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 by the Tribal Court.

(k) Pre-Termination or Pre-Modification of Parental Rights Report.

(1) Upon the filing of a petition under this section for the involuntary termination or modification of parental rights, the Tribal Court shall order that Tribal Family Services prepare and submit to the Tribal Court a report in writing. The report shall be submitted to the Tribal Court no later than ten (10) days before the hearing with copies given to the parents, the child's representative, and all counsel of record. The purpose of the report is to aid the Tribal Court in making a determination on the petition and shall be considered by the Tribal Court prior thereto. The Tribal Court may request additional reports where it deems necessary.

(2) The report shall include the following information: the circumstances of the petition, the investigation, the present condition of the child and parents, documentation of the basis for the recommendation of removal or remaining in the home, the proposed plans for the child's well-being and placement, including efforts to identify, recruit, process and approve a qualified prospective adoptive parent or guardian, and other such facts as may be pertinent to the parent and child relationship.

(3) The report shall include a recommendation and the reasons therefore, as to whether or not the parent and child relationship should be terminated or modified.

(4) The Tribal Court may also consider the report of any Tribal Court-appointed advocate for the child.

(l) Result of Termination or Modification of Parental Rights Order.

(1) Upon the termination of parental rights, all rights, powers, privileges, immunities, duties, and obligations including any rights to custody, legal or physical control, or visitation, the legal relationship between the child and parent shall be severed.

(2) The Tribal Court is also empowered to modify parental rights without full legal severance of all parental rights, and the parties are encouraged to negotiate a modification agreement, subject to the Tribal Court's approval, that is tailored to meet the best interests of the child and the Tribe.

(3) A modification order shall be considered a factor in determining whether the child remains eligible to inherit property or other interest from the parent whose rights were modified. A parent whose rights were modified shall not be eligible to inherit from such child after modification unless expressed by the child after reaching the age of adulthood in a written Will instruction.



(m) Children's Continued Right to Benefits. An order modifying the parent-child relationship shall not disentitle a child to any benefit due the child from any third person, agencies, county, state, or the United States, nor shall any action under this Code be deemed to affect any rights and benefits that the child derives from the child's descent from a member of a federally recognized Indian tribe unless otherwise inconsistent with Tribal law.

(n) Custody after Modification of Parental Rights Order. If upon entering an order modifying the custodial and legal rights of a parent, there remains no parent having parental rights, the Tribal Court shall determine whether the child shall continue to remain under the care and placement responsibility of Tribal Family Services for the purpose of placing the child for adoption, or in the absence of an adoptive home, Tribal Family Services may place the child in a Tribally Approved Home or with an extended family member, guardianship or take other suitable measures for the care and welfare of the child.

(1) The order shall specify the permanency plan for the child and if the child is placed for adoption, the Tribal Court shall order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed one hundred eighty (180) days.

(2) Appoint, consistent with Tribal Placement Preferences under Section 10.12.070, an extended family member, Tribal member, or other preferred placement as legal guardian or guardians for the child, and order that letters of guardianship be issued; or order an alternative permanent placement plan for the child.

(3) Where a child is appointed a legal guardian, as distinct from a placement into foster care, the legal guardian shall have the authority to consent to the adoption of the child, the marriage of the child, the enlistment of the child in the armed forces of the United States, necessary care including but not limited to surgical and other medical treatment for the child, and consent to such matters as might normally be required of the child's parent.

(o) Future Status Review Hearings. If a child has not been adopted or permanently placed within six (6) months of the modification order, another six (6) month Status Review Hearing will be held. Such six (6) month status review hearings and six (6) month permanency hearings will continue until the child is adopted or permanent placement can be established.

**Sec. 10.14.280. Modification, revocation, or extension of tribal court orders.**

(a) Motion to modify, revoke, or extend a Tribal Court order. The Tribal Court may hold a hearing to modify, revoke, or extend a Tribal Court order under this Code at any time upon the oral or written motion of:

(1) The child.

(2) The child's parent(s), Indian custodian, or guardian.



- (3) The prospective adoptive parent(s).
  - (4) The child's counsel or guardian ad litem.
  - (5) The Caseworker.
  - (6) The ACLD or designee.
  - (7) The institution, agency, or person vested with the legal custody of the child or responsibility for protective supervision; or
  - (8) The Tribal Court on its own motion.
- (b) Hearing procedure. Any hearing to modify, revoke, or extend a Tribal Court order shall be held in accordance with the procedures established for the order at issue.
- (c) Considerations. In making the decision to modify, revoke, or extend a Tribal Court order, the Tribal Court should consider all relevant facts and circumstances present at the time of the motion. The Tribal Court should also consider whether there has been a change in the circumstances of the child or his parents, Indian custodian, or guardian and that a modification, revocation, or extension is necessary to serve the best interests of the child.

**Sec. 10.14.290. Visitation - persons other than parent.**

- (a) The Tribal Court, in its discretion, may order visitation for a person other than a parent when consistent with Tribal custom and tradition and in the best interests of the child.
- (b) A person other than the parent may petition the Tribal Court for visitation at any time.
- (c) The Tribal Court may modify an order granting or denying visitation upon petition by a person other than a parent.
- (d) Tribal Family Services must review each visitation petition submitted under this Section and provide a recommendation to the Tribal Court.

**Sec. 10.14.300. Authorization of medical treatment.**

- (a) Tribal Court Authorization. At any time, regardless of whether a child is under the custody of the Tribal Court, the Tribal Court may authorize medical or surgical care for a child when:
  - (1) Parent not Available. A parent, Indian custodian, or guardian is not immediately available and cannot be found after reasonable effort in the circumstances of the case; or





(2) Physician's Opinion. A physician informs the Tribal 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, Indian custodian, or guardian refuses or fails to consent. If time allows in a situation of this type, the Tribal Court shall cause every effort to be made to grant the parent, Indian custodian, or guardian an immediate informal hearing, but this hearing shall not be allowed to further jeopardize the child's life or health.

(b) Religious and Traditional Healing. In making its order, the Tribal Court shall give due consideration to any treatment being given the child by prayer, through spiritual means alone, or through other tribal customs, traditions, practices, or religions or if the child or his parent, Indian custodian, or guardian are adherents of an established religious denomination that relies on this form of treatment in lieu of medical treatment, or practices the tribal customs, traditions, practices, or religion which is relied upon for such treatment of the child.

(c) Written Authorization. After granting any authorization under this Section, the Tribal Court shall reduce the circumstances, finding and authorization to writing and enter it in the records of the Tribal Court and shall cause a copy of the authorization to be given to the appropriate physician, hospital, or both.

(d) Oral Authorization. Oral authorization by the Tribal 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 Tribal Court for performance of care or treatment in reliance on the Tribal Court's authorization, and any function performed thereunder shall be regarded as if it were performed with the child's and the parent, Indian custodian, or guardian's authorization.

**Sec. 10.14.310. Child protection records.**

(a) 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:

- (1) The child.
- (2) The child's parent(s), Indian custodian, or guardian.
- (3) The child's counsel or TCASA.
- (4) Tribal Family Services personnel and/or counsel for Tribal Family Services.
- (5) The Tribal Court personnel directly involved in the handling of the case; and



(6) Any other person by order of the Tribal Court, having legitimate interest in the particular case or the work of the Tribal Court.

(b) Law Enforcement and Tribal Family 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 Tribal Family Services records shall be confidential and shall not be open to inspection to any but the following:

- (1) The child.
- (2) The child's parent(s), Indian custodian, or guardian.
- (3) The child's counsel or TCASA.
- (4) Law enforcement.
- (5) Tribal Family Services personnel and/or counsel for Tribal Family Services.
- (6) The Tribal Court personnel directly involved in the handling of the case; and

(7) Any other person by order of the Tribal Court, having legitimate interest in the particular case or the work of the Tribal Court.

**Sec. 10.14.320. Finality.**

All judgments of the Tribal Court shall be final, and shall be in writing, signed by the Tribal Court judge.

**SECTION 3.** The Tribal Council hereby finds that the adoption of this Ordinance does not constitute a “Major Tribal Action” requiring the preparation of an environmental assessment or an environmental impact statement.

**SECTION 4.** If any section, subsection, phrase, or clause of this Ordinance is for any reason held to be unlawful or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Tribal Council hereby declares that it would have passed this Ordinance and each section, subsection, phrase, or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unlawful or unconstitutional.

**SECTION 5.** Nothing contained in this Ordinance is intended to, nor does in any way, limit, alter, restrict, or waive the Agua Caliente Band of Cahuilla Indians’ sovereign immunity.



**SECTION 6.** The Tribal Council expressly reserves the right to alter, amend, or repeal this Ordinance if it determines that such action is in the best interest of the Tribe.

**SECTION 7.** This Ordinance shall become effective immediately upon its adoption.

**SECTION 8.** Upon the effective date of this Ordinance, any and all prior inconsistent resolutions, policies, ordinances, and/or procedures of the Tribe that pertain to the subject matter hereof are hereby repealed, superseded, and/or amended to comply with this Ordinance.

**SECTION 9.** Within fifteen (15) days after adoption, Tribal staff shall cause a summary of this Ordinance to be published one time in a newspaper of general circulation published and circulated on the Reservation.

**BE IT ADOPTED AND ENACTED** by the Tribal Council of the Agua Caliente Band of Cahuilla Indians, this 4th day of June, 2024.

Reid D. Milanovich, Chairman

Candace C. Patencio, Vice Chairman

Savana R. Saubel, Secretary-Treasurer

John R. Preckwinkle III, Member

Virginia Sixa, Member



I, the undersigned, the Secretary-Treasurer of the Agua Caliente Band of Cahuilla Indians, hereby certify that the Tribal Council is composed of five members of whom 5, constituting a quorum, were present at a meeting whereof, duly called, noticed, convened and held on this 4<sup>th</sup> day of June, 2024; that the foregoing Ordinance was duly adopted at such meeting by the affirmative vote of 4-0-0 and that said Ordinance has not been rescinded or amended in any way.

A handwritten signature in blue ink, reading "Savana R. Saubel", is written over a horizontal line.

Savana R. Saubel, Secretary-Treasurer