

KETCIDKAN INDIAN CORPORATION

ORDINANCE 2: CHILD WELFARE

PASSED BY 11-IE MEMBERSHIP IN A REFERENDUM VOTE- JANUARY. 1994

SECTION 1: PURPOSE

The purpose of this ordinance is to protect the best interests of Alaska Native/Indian children and to promote the stability, integrity and security of families and Tribes in accordance with Article V- "Powers", Section I (f) in the Ketchikan Indian Corporation Constitution as ratified on January 27, 1940.

SECTION2: JURISDICTION

02.1 MEMBER CHILD JURISDICTION: The jurisdiction of the Ketchikan Indian Corporation shall be exercised over all Alaska Native/Indian children who are members, or descendants of members of its Tribal Enrollment Rolls, pursuant to Tribal Laws, the Federal Indian Child Welfare Act (ICWA) as codified at 25 U.S.C. 1901, et. seq.; and pursuant to applicable Tribal/State Agreement. This Tribal Jurisdiction shall be deemed limited only by the exercise of legitimate preemptive law. It extends over members and descendants even though in other territorial jurisdictions.

02.2 NON-MEMBER CHILD JURISDICTION: Jurisdiction may be exercised over non-member children's matters by agreement with their tribe, the state and their legal custodians.

02.3 JURISDICTIONAL DECISIONS: Where legal custody and forum is at issue between jurisdictions, the Tribal Court shall decide if it is the appropriate forum by considering the Federal ICWA and its provisions for transfer and delineation of jurisdiction; the Uniform Child Custody Act and any applicable jurisdictional agreements.

02.03.1 TRANSFER & DECLINATION: Transfer shall have been granted upon request, good cause to the contrary, by the state court, and subject to Tribal Court acceptance or declination, for any foster care or termination to be valid, whether or not the child is domiciled in Tribal Court jurisdiction.

02.4 FULL FAITH AND CREDIT: The courts of Ketchikan Indian Corporation shall give full faith and credit to the public acts, records and judicial proceedings and order of other jurisdictions as they are lawfully given in that jurisdiction. Technical variations in practice that do not affect the fundamental fairness Of the proceedings nor usurp the Federal ICWA shall not be reason to fail to give full faith and credit.

SECTION3: ADMINISTRATION

03.1 MANAGER: The implementation and administration of the policies and laws of the Ketchikan Indian Corporation community is delegated to the office of General Manager (Manager, hereafter), by appointment from the Tribal Council.

03.2 MANAGERIAL POWERS, FUNCTIONS: The manager shall have the power and authority to carry out the duties of this title as are necessary and appropriate. The manager shall particularly:

03.02.1 Monitor, Ensure State Compliance: Monitor and seek to ensure state compliance with the minimum requirements of the Federal ICWA, and

- 03.02.2 Intennediary Spokesman: Act as intennediary spokesman between entities, courts and parties, and to bring petitions in courts and agencies on behalf of tribal members and their children when their rights have been abrogated under the Federal ICWA, and
- 03.02.3 Court Spokesperson or Advocate: Act as court spokesperson, or advocate for tribal members, the child, or the Council unless there is a conflict of interest in the representations, in which case the manager should either seek an additional person's appointment, a guardian ad-litem's appointment, qualified expert tribal witness or other person, and
- 03.02.4 Maintain Lists of Qualified Personnel: Maintain a list of tribally qualified expert witnesses, or guardian ad litem, and foster homes qualified as either or both, tribally licensed and/or state licensed. The manager shall work with Council selected committees to set standard criteria for persons or homes for these positions.

**SECTION 4: REASONS FOR CHANGE IN CHILD CUSTODY IN EMERGENCIES;
FOSTER CARE: VOLUNTARY ADOPTIONS & INVOLUNTARY PRE-ADOPTIONS**

- 4.1 EMERGENCY PROTECTIVE REMOVALS: When a Tribal/State Agreement is in effect, an emergency removal shall be pursuant to the Agreement. In the absence of an agreement, the Federal ICWA procedures and law shall be the minimum protection standards for the rights of the tribal members, whether as parents, custodians or tribal community.

Legal protection under ICWA shall be the higher of state or other federal law. Decisions made for a child shall be for the child's best interests which follow a presumption that this would be in the tribal family and community.

- 4.1.1 Reasons For: To prevent imminent physical harm or damage, abuse or neglect after finding beyond a reasonable doubt that the child's present environment may be an imminent danger.
- 4.1.2 Tenninating Removal: The removal must be tenninated immediately when it is no longer necessary to prevent such harm. The state or tribal entity responsible for the removal shall expeditiously start a custody proceeding, transfer the child to tribal jurisdiction, or return the child to the home as appropriate and complying with the Federal ICWA.

SECTION 5: FOSTER CARE: FINDINGS BY A COURT NECESSARY TO JUSTIFY FOSTER CARE.

- 05.1 FOLLOWING AN EMERGENCY REMOVAL, A FINDING OF ABUSE OR NEGLECT IS A PREREQUISITE TO PLACEMENT IN FOSTER HOME: Following an emergency removal of a child from a home for protective purposes, a proceeding must be held in which a judge finds one of the following circumstances to justify temporary foster care placement:
- 05.01.1 A neglected or dependent child in need of aid or supervision.
- 05.01.2 A child that is in imminent danger of being physically or emotionally damaged.

- 05.2 **A FINDING OF PROOF BY CLEAR & CONVINCING EVIDENCE STANDARD:**
The court must find the evidence is clear and convincing that the above conditions are present in order to justify foster care placement.
- 05.3 **QUALIFIED WITNESS TESTIMONY:** The judge must find that a qualified expert witness has given testimony to support a finding that the child is in need of protection and placement. A tribally qualified expert witness' testimony shall be accorded more weight than a non-tribally qualified witness.
- 05.4 **DECISION BASED ON COMMUNITY SOCIAL & CULTURAL STANDARDS:** The judge must be able to find that the placement preferences and testimonies were based on the prevailing social and cultural standards of the Alaska Native/Indian Community in which the parent(s) or extended family resides, or with which they maintain social and cultural ties.
- 05.5 **ACTIVE EFFORTS FOR REMEDIAL & REHABILITATIVE PROGRAMS FOR FAMILIES:** The court must find that active efforts were made by the state to provide remedial and rehabilitative programs designed to prevent the breakup of the family and that the efforts were unsuccessful.
- 05.6 **PROPER NOTICE OF LOCATION, INTERVENTION, COUNSEL, TRANSFER, EXAMINATION OF RECORDS, EXTRA TIME:** The court shall find that proper notice has informed parents, custodian and the tribe of the location of the proceedings, the rights of intervention, transfer, examination of all report filed, right to an extra 20 days preparation time if requested, as well as the appointment of counsel upon a finding of indigence of the parent or custodian. Counsel may also be appointed to serve the best interests of the child.

SECTION 6: ADOPTIVE OR PRE-ADOPTIVE PLACEMENTS- PREREQUISITE REASONS:

- 6.1 VOLUNTARY RELINQUISHMENTS:** In order to be a valid, voluntary relinquishment of parental rights, a court has to find that:
- 6.1.1 **Written Consent:** The consent was executed in writing.
- 6.1.2 **Court of Competent Jurisdiction:** The consent was recorded before a judge of a court of competent jurisdiction.
- 6.1.3 **Judicial Certification of Parental Understanding:** The presiding judge certified that the terms and conditions of the consent were fully explained in detail and that the parent or Indian custodian fully understood the explanation, or that *it* was interpreted in the language they understood.
- 6.1.4 **No Consent Valid Within 10 Days of Birth:** That the consent was not obtained prior to or within ten (10) days after the birth of the Indian child, or the consent shall be deemed invalid.
- 6.1.5 **Consent Withdrawal:** Notwithstanding the provisions of 06.01.01 - 06.01.04 above, any parent or Alaska Native/Indian custodian may withdraw their consent at any time, for any reason, and upon their withdrawal of consent, the child shall be returned, unless the voluntary placement

proceeding was adoptive, in which case, consent may only be withdrawn prior to the entry of a final decree. The parent may petition for return and the court shall grant the petition unless it is found not to be in the best interests of the child, pursuant to 25 USC 1912 and 1916.

- 6.1.7 Fraud or Duress Invalidations: Findings of fraud or duress upon the parent shall entitle the parent or custodian to vacation of a decree of adoption or termination of rights and return of the child, although if two (2) years or more have passed, it may not be invalidated unless state law, Tribal/State Agreement, or other preemptive law applies.
- 6.1.8 Notice & Rights to Intervene, Counsel, Transfer for Parents, Custodians, Tribe: The court shall also find that notice of the proceedings, the right to intervene, and the right to counsel, as well as the right to request transfer of jurisdiction to Tribal Court, were given to the parents or custodian of the child and the child's tribe.
- 6.1.9 Requests for Anonymity: The Federal ICWA provides that a court or agency shall give weight to a desire for anonymity in applying the placement preferences.

6.2 INVOLUNTARY TERMINATIONS OF PARENTAL RIGHTS & ADOPTIVE, PRE-ADOPTIVE PLACEMENTS OF CHILD:

- 6.2.1 Abuse or Neglect is a Prerequisite to Adoptive or Pre-Adoptive Placement When Child is Removed From Home Against Parent's/Custodian's Consent:
 A. A neglected or dependent child in need of aid or supervision.
 B. A child that is in imminent danger of being physically or emotionally damaged.
- 6.2.2 Proof Beyond a Reasonable Doubt Standard: The court must find evidence beyond a reasonable doubt that the above conditions are present in order to justify adoptive or pre-adoptive placement in an involuntary termination.
- 6.2.3 Qualified Witness Testimony: The judge must find that a qualified expert witness has given testimony to support a finding that the child is in need of protection and placement. A tribally qualified expert witness' testimony shall be accorded more weight than a non-tribally qualified witness.
- 6.2.4 Community Social & Cultural Standards: The judge must be able to find that the placement preferences and testimonies were based on the prevailing social and cultural standards, or extended families' residence, or with which they maintain social and cultural ties.
- 6.2.5 Active Efforts for Remedial & Rehabilitative Programs for Families: The court must find that active efforts were made by the state to provide remedial and rehabilitative programs designed to prevent the breakup of the family and that the efforts were unsuccessful.
- 6.2.6 Proper Notice of Location, Intervention, Counsel, Transfer, Examination of Records, Extra Time: The court shall find that proper notice has informed parents, custodian and the tribe of the location of the proceedings, the rights of intervention, transfer, examination of all reports filed, right to an extra twenty (20) days preparation time if requested, as well as the appointment of counsel upon a finding of indigence of the parent or custodian. Counsel may also be

appointed to serve the best interests of the child.

- 6.2.7 Subsequent Placements of a Child: Subsequent placement of a child from a foster or adoptive home shall be subject to the provisions of the Federal ICWA for initial notice and placement procedures.

SECTION 7: NOTICE REQUIREMENTS

07.1 TIME PERIODS REQUIRED FOR GIVING NOTICE OF CUSTODY PROCEEDINGS ARE:

07.01.1 Involuntary Proceedings (Foster Care or Termination of Parental Rights at Adoption or Pre- Adoption): By Tribal/State Agreement or ten (10) days after receipt of notice, unless the parents or tribe are unknown. (The state or tribal entity responsible for an emergency removal must immediately start a custody proceeding complying with the Federal ICWA.)

A. Ten (10) days or agreement if contact known: The required time for notice to the parent(s), custodian and tribe, of any involuntary proceeding shall be that of a Tribal/State Agreement if one is in effect. In the absence of an agreement, the notice shall be that of the Federal ICWA which is ten (10) days after they receive notice of the proceeding by Registered Mail, Return Receipt Requested, and as evidenced by the date of their receipt.

B. If unknown, notice to Secretary: If the parent(s) or tribe of the child cannot be found, then notice should be given to the Bureau of Indian Affairs, Secretary of the Interior, who has the duty to provide notice to the parent(s) and tribe. The Secretary has the duty to send notice by Registered Mail within fifteen (15) days, but no action for involuntary termination can be taken until ten (10) days after receipt of the notice by the parent(s), custodian or the tribe of the child.

07.01.2 Extra twenty (20) days' time upon request of parents, custodian and tribe: They shall be granted an extra twenty (20) days to prepare when requested.

07.2 METHODS FOR GIVING NOTICE: The method to be used for giving notice shall first follow a Tribal/State Agreement. If there is no agreement, it shall be by Registered Mail, Return Receipt Requested. Time for custodial, parental or tribal action starts at time receipt is signed.

07.3 OTHER RIGHTS: Location, Intervention, Counsel, Transfer, And Examination of Records, And Extra Time: The notice shall inform of the location of the proceedings, the rights of intervention, transfer, examination of all reports filed, right to an extra twenty (20) days preparation time if requested, as well as the appointment of counsel upon a finding of indigence of the parent or custodian. Counsel may also be appointed to serve the best interests of the child.

SECTION 8: PLACEMENT PRIORITIES

08.1 PLACEMENT PRIORITY ORDER IN ALL PROCEEDINGS: In all placement proceedings of tribal members' children, including adoptions, preference is to be given to the following placement priority order (08.01.01 - 08.01.05 below), adopted by the Tribal Council unless good cause to contrary is established, or

pursuant to a current Tribal/State Agreement which any preempt this order. In a voluntary placement where a consenting parent desires anonymity, provision may be made for the court or agency to give weight to that desire for anonymity in applying the preferences.

- 08.01.01 A member of the child's extended family;
- 08.01.02 Other members of the child's tribe;
- 08.01.03 An Alaska Native/Indian foster home or adoptive family;
- 08.01.04 A foster care facility which is operated by Alaska Natives/Indians;
- 08.01.05 A licensed non-Native family or facility.

08.02 PLACEMENT & STATE COMPLIANCE RECORDS TO BE AVAILABLE: The availability and access to placement records from the state is assured under the Federal JCWA. The placement records of the state shall evidence their efforts to comply with the order of placement priority. It may be compelled only by an order of the Ketchikan Indian Corporation Tribal Court.

SECTION 9: RECORDS -ACCESS TO & CONFIDENTIALITY OF:

- 09.1 RIGHTS TO TRIBAL AFFILIATION KNOWLEDGE WHEN EIGHTEEN (18):
When the Tribal Court was the court which entered a person's decree of adoption, the court shall give information on tribal affiliation to that person upon application to the court and upon reaching the age of eighteen (18). The information on tribal affiliation shall include the biological parent's affiliation(s), and shall include such other information as is necessary to protect any rights flowing to the person from the tribal membership.
- 09.2 DOCUMENTS OF DECISION TO BE AVAILABLE: Each party in a foster care placement or termination of parental rights proceeding shall have the right to examine all reports or other documents filed with the court upon which any decision may be based.
- 09.3 PLACEMENT & STATE COMPLIANCE RECORDS TO BE AVAILABLE: The availability and access to placement records from the state is assured under the Federal ICWA. The placement records of the state shall evidence their efforts to comply with the order of placement priority. It may be compelled only by an order of the Ketchikan Indian Corporation Tribal Court.

SECTION 10: RIGHTS AND PROOFS

- 10.1 PROOF OF EFFORTS TO KEEP FAMILY INTACT:
 - 10.01.1 The Tribal Court or the Manager shall ensure that the state or other petitioner, satisfies the requirements of the ICWA to prove:
 - A. Beyond a reasonable doubt, in termination of parental rights proceedings, or
 - B. with clear and convincing evidence, in foster care placements;

- 10.01.02 that continued custody of a child by the parent or Alaska Native/Indian custodian is likely to result in serious emotional or physical damage to the child, and
- A. that active efforts had been made to provide remedial services and rehabilitative programs which were designed to prevent breakup of families, and
 - B. that those efforts have been unsuccessful.

10.2 STANDARD OF PROOF OF GOOD CAUSE TO THE CONTRARY FOR NON-COMPLIANCE WITH PLACEMENT PRIORITIES, LEAST RESTRICTIVE SETTING LIKE A FAMILY & TO MEET SPECIAL NEEDS: Good cause to the contrary must be shown for an non-compliance with the order of placement priorities, being followed in foster care or pre-adoptive placements and for not placing the child in the least restrictive setting which most approximates a family and in which any special needs of the child may be met.

SECTION 11: LEGAL REMEDIES: INVALIDATIONS PRIOR PROCEEDINGS & ACTION; DECLINING JURISDICTION OVER IMPROPER ACTIONS; RETURN OF CHILDREN

- 11.1 HIGHEST PROTECTION/MINIMUM STANDARDS WHOSE RIGHTS: The judge of the Tribal Court shall consider the following to analyze and determine whether tribal members' rights have been abrogated under ICWA. The provisions of 25 USC 1921 shall apply to construe all provisions of 25 USC 1901, et. seq., as the minimum standards; (:i.e. whichever law provides the highest protection for tribal members' rights shall be deemed the only appropriate law in the situation).
- 11.01.1 Higher of State/Federal to Parents: "In any case where state or federal law is applicable _____ provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights under this, The state or federal court shall apply the (higher) standard.
 - 11.01.2 Placement Preference Standards: "The standards to be applied in meeting the (placement) preference requirements shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties."
- 11.2 LEGAL REMEDIES TO IMPROPER PROCEEDINGS: The judge of the Tribal Court shall consider the following Federal ICWA sections when it is determined that rights of the tribal member parties have been abrogated by actions of the state or other parties to a proceeding, He/she shall order a proper legal remedy to implement and effectuate the purposes and law of the ICWA protecting those rights.
- 11.02.1 Remedies for Improper Removal or Retention of Child: "Where any petitioner before a state court has improperly removed the child from custody or improperly retained . The court shall decline jurisdiction over petition and return the child to parent or Indian custodian unless substantial and immediate danger or threat"
 - A. Subsequent Placements: "Whenever child is removed from a foster home or institution for further foster care, pre-adoptive or adoptive placement, such placement shall be in accordance with provisions of this chapter except where, being returned to the parent or custodian from originally removed."
 - 11.02.2 Termination and Proceedings after Emergency Removal: "The state authority

involved shall insure that the emergency removal or placement terminates immediately when no longer necessary to prevent imminent physical damage or harm and shall expeditiously initiate a proceeding as may be appropriate."

- 11.02.3 Violations of 25 USC 1911, 1912, 1913: When violations shown, court should invalidate actions: "Any Indian child, parent, Indian custodian, and the Tribe may petition any court ... to invalidate such action upon a showing that such action violated any provision of Sec. 1911, 1912 and 1913." (i.e. These deal with tribal jurisdiction, pending court proceedings and parental rights in voluntary terminations.)
- 11.02.4 Fraud or Duress Invalidation: Findings of fraud *or* duress upon the parent shall entitle the parent or custodian to vacation of a decree of adoption or termination of rights and return of the child, although if two years or more have passed, it may not be invalidated unless state law, TribalVState Agreement or other preemptive law applies.

SECTION 12: SEVERABILITY

If any part of this Ordinance is held to be invalid, the remainder shall continue to be in full force and effect.

SECTION 13: REFERENDUM

Upon adoption of this Ordinance by the Ketchikan Indian Corporation Tribal Membership, this document may not be added to or in any other way changed, except by the Tribal members in a Referendum vote at the Annual Election.

SECTION 14: DEFINITIONS

These shall be limited to applications within this Ordinance and shall not be used to determine benefits, rights, or burdens under any other.

- 14.1 ACKNOWLEDGMENT OF PATERNITY- Paternity shall be deemed to be acknowledged where an unwed mother, extended family, community or tribe of the Alaska Native/Indian child, or who has submitted a letter, statement or other document to the court or to a party to the child custody proceeding, or a representative of any public entity, including a child placement or adoption agency licensed by the state which acknowledges his paternity.
- 14.2 ACT-The Indian Child Welfare Act, 25 USC 1901 et. seq.
- 14.3 ADJUDICATORY HEARING - Means any hearing to determine whether the allegations of a petition are supported by evidence beyond a reasonable doubt, or the allegations of a petition are supported by a preponderance of the evidence.
- 14.4 ADOPTIVE PLACEMENT- The permanent placement of an Alaska Native/Indian child for adoption, including any administrative, adjudicatory or dispositional action or any voluntary proceeding whether the placement is made by a state agency, or by a private agency, or individuals, which may result in a final decree of adoption. This includes Alaska Native/Indian children born out of wedlock.

- 14.5 ADOPTIVE PLACEMENT PRIORITIES- The placement priorities of Ketchikan are: Extended Family, Alaska Native/Indian licensed foster home, etc.
- 14.6 ADULT- A person eighteen (18) years of age or older. If they are before a court for an alleged delinquent act committed prior to their eighteenth (18) birthday, they may elect to be judged under the terms of this code, or if concerning whom a petition has been filed for his adoption which is other than under this title, they may be referred to as a child or minor for those purposes.
- 14.7 ALASKA NATIVE-
- 14.07.1 Any person who is a member of an Alaska Native Tribe, or is eligible for membership, and is a member of a Regional Corporation as defined in Section 3(G) of the Alaska Native Claims Settlement Act (43 USC Section 1602(G)), or for purposes of implementing 25 USC Section 1917, the term shall mean any adopted individual who has reached the age of eighteen (18) and who evidences an intent to, or has petitioned the court which entered the final decree of adoption for tribal affiliation and for other information that may be necessary to protect any rights flowing from the individual's tribal relationship.
- 14.07.2 This term also includes any person who is considered by the Alaska Native Tribe to be a member of its community, or for purposes of Section 107, any person who is seeking to determine eligibility for tribal membership.
- 14.8 ALASKA NATIVE/INDIAN CHILD - An unmarried person who is under the age of eighteen (18) and is either:
- 14.08.1 A member of the tribe; or
- 14.08.2 eligible for membership in the tribe, or
- 14.08.3 considered by an Indian tribe to be part of its community, or
- 14.08.4 a member of another tribe and is the biological child of a member of an Indian tribe. (Includes Alaska Native/Indian children born after 1971, and includes a person eighteen (18) years of age or older-under continuing jurisdiction of the court, or who elects to be judged under the terms of this code for an alleged delinquent act committed prior to their eighteenth (18) birthday, or for whom a petition was filed for the adoption other than under this code, who elects to proceed with the adoption.)
- 14.9 ALASKA NATIVE/INDIAN CUSTODIAN- Any Alaska Native/Indian person who has legal custody of an Alaska Native/Indian child under tribal authority, custom, law or under federal or state law, or to whom temporary physical care, custody and control has been transferred by the Alaska Native/Indian parent of such child, whether through the tribe, state or private placement.
- 14.10 ALASKA NATIVE/INDIAN ORGANIZATION - Any organization, group, association, partnership, corporation or other legal entity owned or controlled by Alaska Natives/Indian, or a majority of whose members are Alaska Natives/Indians.

14.11 ALASKA NATIVE/INDIAN TRIBE-

14.1 1.01 Any Alaska Native/Indian Tribe, band, nation or other organized group or community of Indians recognized as eligible for services provided to Indians by the United States Secretary *Of* the Department of interior, because of their status as Indians, including any Alaska Native Village as defamed in Sect. 3(c) of the Alaska Native Claims Settlement Act (43 USC Sect. 1601 (C), as amended, or any other tribe, band, nation, group or community recognized as an Alaska Native/Indian Tribe by the Ketchikan Indian Corporation Tribe, or by any state commission, agency or authority.

14.11.2 This term includes those tribes, bands, nations or groups terminated since 1940, and for the purposes of Title I of the Federal ICW A, those tribes, bands, nations, or other organized groups that are located or by the government of Canada or any province or territory thereof.

14.12 ALASKA TRIBAL QUALIFIED EXPERT- A member of the Alaska Native/Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child rearing practices, culture, traditions and standards of the tribe.

14.13 ASSERTION OF PARENTAL RIGHTS-For the purposes of asserting parental rights under this Ordinance, paternity may be acknowledged or established at any time prior to final termination of such rights under this Ordinance. Reference also to "Acknowledgment".

14.14 CHILD CARE CENTER- Means a facility licensed and approved pursuant to law. If such facility is located outside the tribal jurisdiction, it shall be licensed or approved as required by law in that jurisdiction. I fit is within the tribal community, it shall be one approved by Ketchikan Indian Corporation.

14.15 CIDLD IN NEED OF SUPERVISION-Any Alaska Native/Indian child:

14.15.1 Who has repeatedly disobeyed reasonable and lawful commands or directives of his parent, legal guardian or other custodian;

14.15.2 who is willfully and voluntarily absent from his home without the consent of his parent, guardian or legal custodian for a substantial length of time, or without intent or return; or

14.15.3 who being subject to compulsory school attendance, is willfully and voluntarily absent from school in violation of law; or

14.15.4 has otherwise been determined delinquent by the Ketchikan Indian Corporation Tribal Court.

14.16 CHILD PLACEMENT AGENCY- An agency licensed or approved pursuant to either the law of Ketchikan Indian Corporation, or is if such agency is located outside the tribal jurisdiction, it shall mean one licensed or approved as required by law in that jurisdiction.

14.17 CIDLD CUSTODY PROCEEDING-

14.17.1 Means and includes the following terms which are defined more fully elsewhere in

these definitions.

- A. Emergency Foster Care Placement
 - B. Emergency Foster Care Placement Beyond Seventy-Two (72) Hours
 - C. Foster Care Placement
 - D. Termination of Parental Rights
 - E. Pre-Adoptive Placement (Voluntary or Involuntary)
 - F. Adoptive Placement
- 14.17.2 Such term or terms shall include the placement of Alaska Native/Indian children from birth to the age or majority, i.e., 18 years of age, including Alaska Native/Indian children born out of wedlock.
- 14.17.3 Such term or terms shall not include a placement based upon an act which, if committed by adult, would be placed in the custody of the state social services agency, any placement made by that agency should be carefully supervised by Ketchikan Indian Corporation, that it is in accordance with the full provisions of the Federal ICWA and applicable case law.
- 14.17.4 Such terms shall also not include a placement based upon an award of custody to one of the parents in any proceeding involving a custody contest between the parents. All other proceedings involving family members which meet this definition are covered by this Ordinance.
- 14.18 COMMIT- Means to transfer legal custody to a person, agency or institution, by court action from a prior legal custodian.
- 14.19 CONTACT PERSON- The person named with Manager's authority shall either act as or appoint a person to act as liaison between the Ketchikan Indian Corporation and DHSS to carry out the terms of Tribe V State Child Welfare Agreements and shall carry the authority to resolve problems which may arise in the lawful administration of the same.
- 14.20 COURT SPOKESPERSON- A person (or persons) who is authorized by either written tribal resolution to speak for the tribe and prepare, sign and submit documents on behalf of the tribe in children's proceedings in state court, not including licensed attorneys representing a tribe, or is appointed as the manager, or is delegated as the court spokesperson by the manager.
- 14.21 DELINQUENT CHILD- Means an Alaska Native/Indian child of the Ketchikan Indian Corporation adjudged to be subject to court supervision for actions more serious in legal consequences than child in need of aid determinations, and is:
- 14.21.1 a child who has violated any federal, state or tribal law, excepting a traffic statute or traffic ordinance; or any lawful order of the court made under this act; or
 - 14.11.2 a child who has habitually violated traffic laws or traffic ordinances, and/or
 - 14.21.3 a child whom the Ketchikan Indian Corporation Tribal Court has determined delinquent under customary or traditional law, and has recorded the reasons for the same, as well as appeal procedures. (X-Ref: Definition for Child in Need of Supervision)

- 14.22 DEPARTMENT- Department of Health and Social Services.
- 14.23 DEPARTMENT SOCIAL WORKER- A social worker employed by the Department of Health and Social Services.
- 14.24 DEPRIVATION OF CUSTODY- Means transfer of legal custody by the court from a parent or a previous legal custodian and committed to another person, agency or institution.
- 14.25 DETENTION - Means the temporary care of a child who requires secure custody in physically restricting facilities pending court disposition or an execution of a court order for placement commitment. The Ketchikan detention shall be at JACKSON HOUSE, unless otherwise specifically ordered by the court.
- 14.26 DHSS POST PLACEMENT SERVICES- As per the Tribal/State Agreement.
- 14.27 DILIGENT EFFORTS -A diligent attempt by the Department Social Worker to place an Alaska Native/Indian child in the highest order of preferred tribal placement and includes: A home study of a home specified by the child's tribe, contact with the tribe, a search of all state licensed homes for preferred placements, a search of culturally related villages for possible placement.
- 14.28 DISCOVERABLE MATERIALS/INFORMATION- All documents relied upon by the department social worker in making his/her decision regarding Alaska Native/Indian child custody determinations or in mailing placements, and all notices in any other documents prepared in the case plan. These materials or information will be made available to the tribe within five (5) working days of the order of intervention.
- 14.29 DISMISSAL OF STATE PROCEEDINGS-The state of Alaska shall provide notice to the tribe(s) if the state * custody of an Alaska Native/Indian child terminates, even if the tribe has not intervened.
- 14.30 DISPOSITIONAL HEARING- Means a hearing to determine what order of disposition should be made concerning a child adjudicated as delinquent, in need of supervision or dependent and in need of aid. Such hearing may be part of the proceeding which includes the adjudicatory hearing or it may be held at a time subsequent than adjudicatory hearing.
- 14.31 DOMICILE- Shall be defined by the Ketchikan Indian Corporation, the Tribe in which domicile is or in the absence of such law or custom, shall be determined by applicable state law, except that, until such time as a final decree of adoption is entered, the domicile of an Alaska Native/Indian child of the Ketchikan Indian Corporation, shall be the domicile of the Ketchikan Indian Corporation members when they are the biological parent or Alaska Native/Indian custodian from whose legal custody the child was removed. The domicile is intended by the individual to be their permanent and/or primary place of abode whereas a residence(s) is more temporary in intent of the person. (X-Ref: Residence)
- 14.32 EMERGENCY FOSTER CARE PLACEMENT- This means the placement obtained when either the Ketchikan Indian Corporation, or the State Department of Health and Social Services, takes steps to obtain a court order authorizing an emergency placement of an Alaska Native/Indian child in foster care in order to prevent imminent physical damage or harm to the child, including sexual abuse.
- 14.33 EMERGENCY FOSTER CARE PLACEMENT BEYOND SEVENTY-TWO (72) HOURS - When the state DHSS concludes emergency foster care is necessary for a period longer than seventy-two (72) hours, their

action will require an initial shelter care hearing with expert witness testimony and a subsequent shelter care hearing, as well as a fact finding hearing, for the Alaska Native/Indian child of the Ketchikan Indian Corporation. This may vary according to Tribal/State Agreement, specifically negotiated between KIC and the state.

14.34 EXTENDED FAMILY MEMBER- Shall be as defined by the law or custom of the Ketchikan Indian Corporation Alaska Native/Indian child(ren)'s tribe. Failing that, this term shall mean a person who is at least eighteen (18), and who, by bipod or mirage, is the Alaska Native/Indian's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, or step-parent.

14.35 FAMILY CARE HOME- A facility licensed and approved pursuant to law. If such facility is located outside the KIC jurisdiction, it shall be licensed or approved as required by the jurisdiction in which the facility is located.

14.36 FOSTER CARE PLACEMENT ACTION- Any administrative, adjudicatory or dispositional action including a voluntary proceeding which may result in the placement of an Alaska Native/Indian child in a foster home or institution, group home, or in the home of guardian or conservatory where the parent or Alaska Native/Indian custodian cannot have the Alaska Native/Indian child returned if parental rights have not been terminated.

14.37 FORMAL NOTICE- The procedures for formal notice under this code shall be as agreed to between the Ketchikan Indian Corporation and the state as negotiated and agreed each contract period.

14.38 FULL FAITH AND CREDIT- The Ketchikan Indian Corporation shall recognize and give the same faith, credit, conclusive effect and obligatory force within its jurisdiction to the legislative acts, public records and judicial decisions of other governments from which they originated.

14.39 GOOD CAUSE TO THE CONTRARY-

14.39.1 This may exist if there is clear and convincing evidence that the Alaska Native/Indian child has extraordinary physical or emotional needs that cannot be met within the tribe's stated order of preferences; the preferred placement is likely to result in serious emotional or physical damage to the Alaska Native/Indian child and suitable families within the order of preference are unavailable after a diligent search has been completed.

14.39.2 Factors which may not be used as good cause to the contrary unless waived in writing the tribe are: Inconvenience due to budgetary constraints of any state agency; the economic or social status of any potential preferred placement; the temporary absence of Alaska Native/Indian parent from home village/community to receive remedial/rehabilitative services; availability of rehabilitative services for child's physical/emotional needs in the village; a parent's request for anonymity; a handicapped condition of a foster parent under Section 504 of the Vocational Rehabilitation Act of 1973 as amended.

GROUP CARE FACILITIES AND HOMES- Places other than foster family care homes providing care for small groups of children, but does not mean a detention facility as defined elsewhere.

14.40 GUARDIANSHIP OF THE PERSON- The duty and authority vested by court action to make major decisions affecting a child including, but not limited to:

14.41
14.41.1 The authority to consent to marriage, to enlistment in the armed forces, and to medical and

- surgical treatment;
- 14.41.2 the authority to represent a child in legal actions and to make the other decisions of substantial legal significance concerning the child;
- 14.41.3 the authority to consent to the adoption of a child when the parent child relationship has been terminated by judicial decree; and
- 14.41.4 the rights and responsibilities of legal custody when legal custody has not been vested in another person, agency or institution.
- 14.42 HALFWAY HOUSES- Group care facilities for children who have been placed on probation or parole under the terms of this code title.
- 14.43 HOUSEHOLD-All persons staying in the same dwelling.
- 14.44 IMMEDIATE ADULT FAMILY MEMBER-A person who has reached the age of eighteen (18) and who is the Alaska Native/Indian child's brother, sister, step-brother, step-sister, half-brother or half-sister, or related by blood.
- 14.45 INDIAN- Any person who is a member of an Indian Tribe including an Alaska Native as defined elsewhere in these definitions. The terms are intended to be used interchangeably in this code unless the content clearly differentiates.
- 14.46 INDIAN CHILD'S MAJORITY-When an Alaska Native/Indian child reaches eighteen (18) years of age.
- 14.47 INTER-TRIBAL AGREEMENT -Means an agreement reached with other tribes for either special occasion or shared jurisdiction over individuals, situations or custody cases pertaining to this code's coverage.
- 14.48 INTERVENTION -Means a Tribal action by the Ketchikan Indian Corporation on behalf of a child member in which the court spokesperson entitled to make statements to the court, present witnesses, and introduce evidence on any issue before the court, does so on behalf of the child by the terms of its agreement, the state is required to provide to the KIC Court Spokesperson.
- 14.48.01 Copies of the original case plan
- 14.48.02 All subsequent case reviews
- 14.48.03 Copies of all motions
- 14.48.04 Copies of all notices of hearings
- 14.48.05 Copies of all orders filed that case
- 14.49 INVESTIGATION AGREEMENT-This Agreement provides that:
- 14.49.1 DHSS will not take steps to obtain a superior court order authorizing an emergency placement

of an Alaska Native/Indian child unless such placement is necessary to prevent imminent physical damage or harm to the child, including sexual abuse.

- 14.49.02** The state social worker will involve an Alaska Tribal qualified expert to investigate the facts of the case and that together they will form an opinion regarding the need for continued foster car placement of the Alaska Native/Indian child.
- 14.49.03** The state social worker will write a specific and detailed account of the circumstances that led DHSS to seek court ordered emergency care.
- 14.50 **INVOLUNTARY PRE-ADOPTIVE PLACEMENT-** The temporary placement of an Alaska Native/Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement and that such placement was not voluntary.
- 14.51 **JURISDICTION-** The authority and power of the Ketchikan Indian Corporation Tribal Court(s) to hear and determine proceedings under tills code.
- 14.52 **JUVENILE COURT OR COURTS-** Any of the courts established and empowered by the Ketchikan Indian Corporation to exercise jurisdiction over its child members.
- 14.53 **LEAST RESTRICTIVE SETTING-** Preferred foster home placement which provides the greatest access for the child to the highest concentration of the child's extended family, and which is the least institutional in nature.
- 14.54 **LEGAL CUSTODY** - The right to the care, custody and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education and discipline for a child and in an emergency, to authorize surgery or other extraordinary care. Legal custody may be taken from a parent only by court action.
- 14.55 **MENTALLY OR PHYSICALLY INCAPABLE ALASKA NATIVE/INDIAN CHILD-** A child who lacks the mental or physical capability to perform with the ability of an average child of the same age, to the extent that such lack of capability either currently handicaps, or has the potential to handicap, such child's future possibility and probability of becoming a self-sustaining adult, and has been determined by either tribal, state or administrative law to lack tills capacity or capability.
- 14.56 **NATIVE REVIEW TEAMS-** Native/Indian volunteers who are appointed by the KIC Tribe pursuant to a TribeVState Child Welfare Agreement, who select Native/Indian Child Foster/Adoptive Home placements. After selection, these placements are then subject to Slate DHSS quarterly review. The guidelines and substantive law of placements, appointment and DHSS reviews are set out in this code and other law of the Ketchikan Indian Corporation which incorporates the Agreements.
- 14.57 **NEGLIGENCE, CHILD NEGLECT-** The omission or failure to exercise the care, conduct or attention that could reasonably be expected of a reasonable parent or legal custodian of a child in similar circumstances. The failure to exercise the duty of due care which would be owed by a reasonable parent or legal custodian in similar circumstances, to a child or children in their care, in conduct from which injury might result. The determination of negligent conduct is to be a determination within factual circumstances by the Ketchikan Indian Corporation or in the absence of jurisdiction by the Ketchikan Indian Corporation, then by a court or board the Ketchikan Indian Corporation accords full faith and credit.

- 14.58 **NEGLECTED OR DEPENDENT CHILD OR DEPENDENT & NEGLECTED CIDLD-** A child who has been determined by the Ketchikan Indian Corporation or, in the absence of jurisdiction by KIC. Then by a court or board KIC accords full faith and credit.
- 14.59 **ORAL NOTICE-** This term is used to refer to notice by phone or direct contact which shall be legally sufficient evidence of notice only when confirmed or acknowledged by a writing, made at or near the time of oral notice, which at a minimum states who the contact was made with, subject and personal matter of the notice, the date and who gave the notice.
- 14.60 **PARENT-** Either biological parent or parents of an Alaska Native/Indian child, or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. The term does not include the unwed father where paternity has not been acknowledged or established pursuant to state law or tribal law or custom.
- 14.61 **PRE-ADOPTIVE PLACEMENT-**The temporary placement of an Alaska Native/Indian child in a foster home or institution after the termination of parental rights, but prior to, or in lieu of adoptive placement, pursuant to the Tribal/State Agreement providing for review, approval and the order of preference of the Ketchikan Indian Corporation and placement.
- 14.62 **PROTECTIVE SUPERVISION-** A legal status created by court order under which the child is permitted to remain in his home or is placed with a relative or other suitable person, and supervision and assistance is provided by the court, the Tribal Social Services Department, or other agency designated by the court.
- 14.63 **PUTATIVE FATHERS** - An alleged or reputed father.
- 14.64 **QUALIFIED EXPERT WITNESS-** A professional person recognized and approved by the child's tribe who has substantial education and experience in his/her specialty.
- 14.65 **QUALIFIED ICWA EXPERT-** A person who has been recognized and approved by the tribe as having substantial experience in the delivery of child and family services to Alaska Native/Indians, and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Alaska Native/Indian child's tribe and community.
- 14.66 **REASONABLE EFFORTS-** Diligent and appropriate efforts, pursuant to the Tribal/State Agreement, this term describes the affirmative and appropriate steps the DHSS will take to make it possible to eliminate the need to remove the Alaska Native/Indian child from the home, or failing that, to return the child to the home following placement outside the home, and to insure that the emergency foster care is no longer necessary to prevent imminent physical damage or harm to the child, including sexual abuse.

These efforts include social and other necessary services to the Alaska Native/Indian parent or custodian and the Alaska Native/Indian child, and by definition will not mean simply providing the Alaska Native/Indian parent with a telephone number or address to a service, especially with resistant clients.

- 14.67 **REHABILITATIVE SERVICES** - When pursuant to the Tribal/State Model Agreement, these mean the social and other services provided by the state DHSS to Alaska Native/Indian families, including parents after court action as part of a plan designed to return the Alaska Native/Indian child to his or her family after the child has been removed, or preferably to in some that reasonable efforts are made to prevent or to eliminate the need for the removal of the Alaska

Native/Indian child from the family home. An example of inadequate rehabilitative services is a department social worker merely handing a client a telephone number or address to a referred service. That standing alone, does not constitute rehabilitative services.

- 14.68 REMEDIAL SERVICES-Pursuant to the Tribal/State Model Agreement on ICWA, these are social and other services that DHSS will provide to Alaska Native/Indian families based on an affirmativeculturally sensitive plan which takes into account social and cultural conditions in the Alaska Native/Indian child's community, designed to effectively address and eliminate problems destructive to the family and prevent or eliminate the need for removal of the child from the family home and which will be taken prior to court action.
- 14.69 ROCS- Report of Contact Sheets -The State of Alaska Social Workers name for written records of client contacts.
- 14.70 RESERVATION- "Indian Country" as defined in Sect. 1151 Title 18. United States Code, and any lands, not covered under such section, title to which is either held by the United States or any state in trust for the benefit of any Indian tribe or individual; or held by any Indian tribe or individual subject to a restriction by the United States against alienation.
- 14.71 RESIDENCE- Shall be as defined by this Ordinance of the Ketchikan Indian Corporation, the tribal law or custom, of the Indian child's tribe, or in the absence of such law or custom, shall be determined by applicable state law, except that until such time as a biological parent or Indian custodian from whom legal custody was removed. Residence and domicile are generally synonymous unless there is a conflict in which case the residence means a more temporary abode for the individual, whereas the domicile is intended by the individual to be more permanent and a primary place of abode.
- 14.72 RESIDUAL PARENTAL RIGHTS & RESPONSIBILITIES- Those rights and responsibilities, if any, remaining with the parent after legal custody, guardianship of the person, or both have been vested in another person, agency or institution, including but not necessarily limited to: responsibility for support, right to consent to adoption, right to reasonable visitation (unless restricted by the court) and the right to determine the child's religious affiliation. These residuals may result either from voluntary agreements or court or agency actions not inconsistent with other provisions of this code.
- 14.73 SECRETARY-Secretary of the Interior, Administration of Indian Affairs.
- 14.74 SECRETARY OF THE INTERIOR- See "Secretary".
- 14.75 SHELTER - The temporary care of a child in physically or unrestricting facilities pending court disposition or execution of a court order for placement. It is synonymous with group care facilities and homes.
- 14.76 TERMINATION OF PARENTAL RIGHTS ACTIONS- Any adjudicatory or dispositional action, including a voluntary proceeding which may result in the termination of the Alaska Native/Indian Parent-Child Relationship or the removal of the child from the parent's custody. A lawful termination of parental rights cannot occur when the only grounds for such a petition are evidence of community or familial poverty, or non-conforming social behaviors on the part of the Alaska Native/Indian custodian, unless such factors are directly connected to evidence of serious emotional or physical harm to the Alaska Native/Indian child.
- 14.77 TRIBAL COURT-A court with jurisdiction over child custody proceedings and which is either a court of Indian

offenses, a court established and operated under the code or custom of an Indian Tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings; herein it shall generally refer to the Ketchikan Indian Corporation Tribal Court, unless otherwise specified.

- 14.78 TRIBAL VILLAGE REPRESENTATIVE- A person chosen by the tribe to work with the State Social Worker when investigation is necessary.
- 14.79 VILLAGE - The traditional "Use Lands" of a small isolated tribal community.
- 14.80 VOLUNTARY PRE-ADOPTIVE PLACEMENT - These describe placements done voluntarily and are within the Tribal/State Model Agreement guidelines for placements. The location of these placements will provide the Alaska Native Indian parent or Alaska Native Indian custodian with the opportunity to have regular access to the child without undue hardship giving consideration to the Alaska Native/Indian parents or Alaska Native/Indian custodians' economic, physical or cultural circumstances.