

## TITLE 04 - CCTHITA CHILD AND FAMILY

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## Chapter 01. General Provisions

<b>Sec. 04.01.001</b>	<b>Central Council Tlingit &amp; Haida Child and Family Court Established</b>
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### **Sec. 04.01.001            Central Council Tlingit & Haida Child and Family Court Established**

There is hereby established the Central Council Tlingit & Haida Child and Family Court, herein after Child and Family Court, a division of the CCTHITA Tribal Court, which has the authority to hear cases arising under this statute involving persons under the age of eighteen (18) which are within the jurisdiction of CCTHITA.

#### **Sec. 04.01.002            Purpose**

The purpose of this statute is to honor the values and traditions of our ancestors to promote respect, education, and justice to our children, grandchildren, and future generations of Tlingit and Haida people.

This chapter shall be interpreted and construed to carry out the following purposes:

- (1) To ensure the health and welfare of all children and families within the jurisdiction of CCTHITA;
- (2) To preserve the unity of the family through the provision of services to children and families that emphasize, to the extent possible and in the best interest, welfare, and safety of the child, removal prevention, early intervention, and other solutions based on the honored customs and traditions of the Tlingit and Haida people;
- (3) To provide for the care, protection, and mental and physical development of children who come within the provisions of the Statute;
- (4) To give full and just consideration to the religious and traditional preferences and practices of parties appearing before the Children's Court;
- (5) To ensure that a program of supervision, care, and rehabilitation is available to those children who come within the provisions of the Statute;

(6) To provide judicial and other procedures through which the provisions of this Statute are executed and enforced and by which the parties are assured a fair hearing and the recognition and enforcement of their legal rights.

### **Tlingit and Haida Traditional and Cultural Systems**

The Tlingit (Lingit) and Haida cultures shall be given due recognition in the application of this Statute and by the Child Welfare Tribal Court by honoring and utilizing the natural support systems of our tribal and clan relationships, and the traditional ways of our people that includes our culture, language, songs, dance, stories, respecting our elders, and tribal values. Tlingit and Haida clan ties incorporate our diverse languages and customs, kinship systems, historical ties to our land and resources, and many other characteristics that unite the tribal membership into common identifies. While many aspects of our cultural practices and lifestyles have changed within our villages and communities of Southeast Alaska, the underlying authority of the Tlingit and Haida clan systems have endured and still exist today.

Many of today's problems that put our children and families at risk are a result of alcohol and substance abuse which further leads to issues of child abuse, neglect, and family violence. Such problems have been closely linked to the loss of our traditional ways of life, roles, and support systems for tribal members within our villages and communities of Southeast Alaska, and the impacts of poverty and substance abuse have affected the cohesion and stability of the tribal family unit.

Our children, viewed as the seeds of our future, are traditionally treated with care, shown their place in the world, and taught how they relate to the clan system and community. They are given life lessons by both the mother and father's family, and learn that they possess an identity that is based in their kinship.

Learning one's genealogy is vitally important for a child during their growing up years. Our relationship to one another has purpose. We don't have cousins, we have brothers and sisters. Our mother's sister (Tlaak'w) is mother. Our father's brother is uncle (Sani or Eesh). Our father's sister (Aat) is auntie. Our children are brought up with a sense of belonging, starting before birth with family talking to and connecting with the child while still in the womb!

Our clan system is and remains a part of the child, even when they are raised outside the clan. They are still related. Traditionally, a child stayed within a clan house, first with Auntie (TI'aak'w) then with Aat. We never had orphans; we took care of our own. If the child grows up with knowledge and experience of the clan system, they know the importance of their place within their clan. The opposite clan was always available to take in a child, but only if there is no one available from the child's clan. This was the traditional placement preference.

Termination of parental rights should be considered only in extreme circumstances and only if all other possibilities have failed. Traditionally, if a clan adoption occurred, there was no termination of parental rights. The situation was discussed at a round table as to what was best for clan and community (village) and the child. Decisions were made in a manner that was non-judgmental towards families. The primary concern that existed was for that of the children and the clan. The child should always know who they are.

The death of a clan member sets in motion a number of things. Unlike “Western” concepts, the mourning members of the deceased are actually the clan of the deceased member itself. Traditionally, it would be turned over to the clan leaders and/or maternal nephew(s), who, would take care of the deceased and they will then place a row their own behind the deceased to show their in-laws that they are “standing with them.” All of this is what we call, Woosh yaa awudane – Respect for Each Other. Therefore, fathers and his family play an important role throughout the child’s life. Again, genealogy plays a big part in this scenario. People on the father’s side, opposite grandparents are appointed, by this Lingit law, the connection of the child is shown through this practice of our people as a clan system. This entire process is important and protects family lineage. We say in Lingit, “Haa shuka awe,” or “This is our future” Haa kusteeey aya, “This is our way of life.”

**Sec. 04.01.003 Construction**

This statute is exempt from the rule of strict construction. It shall be read and understood in a manner that gives full effect to the purpose stated, and the Court, at its discretion, may seek guidance from the Elders Court.

**Sec. 04.01.004 Definitions**

When the words listed in this section appear in this chapter, they shall have the following meaning unless a different meaning is clearly intended.

- A. “Abandonment” The conscious disregard of parental or custodial responsibilities toward a minor by failing to provide support, supervision, or to maintain regular contact without justifiable cause.
- B. “Adult” Any person who is either eighteen (18) years of age or older, married, or emancipated.
- C. “Child in Need of Care” A child that has been found by the Court to be abandoned, neglected, or abused as defined in CSC 04.02.002. of this Statute.
- D. “Court” The Central Council Tlingit & Haida Child and Family Court.
- E. “Court Appointed Special Advocate (CASA)” An adult volunteer assigned by the Court to represent the best interests of a child whose case is before the Court, and who advocates for the rights of that child. A CASA speaks with the child, interviews people who might have information about the child, speaks out for improved services for the child, and makes recommendations to the Court regarding what is in the child’s best interests.
- F. “Cultural Connection Agreement” A binding contract between a parent or guardian and the Tribe that ensures a child remains connected with his or her culture and traditions.
- G. “Custodian” A person or entity having legal authority over a child either by court order or parent’s permission. This term generally applies to foster

parents, child placing agencies, and persons temporarily caring for a child at the request of a parent.

- H.** “Extended Family” This term does not have a precise definition. Under Tlingit and Haida custom and traditions, there are formal and informal ties, which bind the community. Extended family ties are based on bloodlines, marriage, friendship, and caring. All women in the community become “auntie” or “grandma” when they become a certain age, regardless of blood relationship. Although grandparents (including great and great-great), aunts, uncles, siblings, cousins, “in-laws” and “step” relations are all extended family, any member of the Tlingit and Haida communities who is reliable, responsible, loving, and willing to care for a child who may be considered extended family.
- I.** “Guardian” A person other than the child’s parent who is legally responsible for that child.
- J.** “Indian Tribe” Any Tribe, Band, Nation, or group of Indians recognized by the Secretary of Interior as eligible for services provided to Indians; any treaty Tribe, Metis community, or non-status Indian community from Canada; and any Tribe recognized as such by CCTHITA, regardless of federal recognition status.
- K.** “Indian Child” Any unmarried person under the age of eighteen (18) years who is:
  - 1.** A member of a federally recognized Indian Tribe;
  - 2.** Eligible for membership in a federally recognized Indian Tribe, including eligibility for adoption into tribal membership;
  - 3.** The child or grandchild of a member of a federally recognized Indian Tribe;
  - 4.** Eligible for membership or a member of a Canadian band; or
  - 5.** Considered to be Indian by himself or herself and by the Tlingit & Haida community in which he or she resides.
- L.** “Parent” This term includes a biological or adoptive parent, however, it does not include persons whose parental rights have been terminated, or an unwed father who has not acknowledged or established paternity in one of the following ways: (1) identified as the father on the child’s birth certificate, (2) acknowledging paternity to tribal enrollment authorities or to a court, or (3) through formal paternity proceedings in state or tribal proceedings.
- M.** “Parties” People with a connection to the family in a court case who have been invited by the Court to participate.
- N.** “Presenting Officer” Any person appointed by the President and affirmed by the Executive Council to file petitions regarding child welfare on



behalf of the Tribe. This person shall be a member of the CCTHITA Tribal Court Bar, but need not be a licensed attorney.

- O. “TFYS” The Tribal Family and Youth Services Program.
- P. “Tribal Status” The Tribe or Tribes, if any, in which a child is a member or eligible for membership. (Membership and enrollment are used interchangeably in this Statute.)
- Q. “Tribe” The Central Council of Tlingit and Haida Indian Tribes of Alaska, or CCTHITA.

**Sec. 04.01.005 Jurisdiction**

**A. Generally:**

- 1. The CCTHITA Child and Family Court shall have jurisdiction over any proceedings arising under this statute, and any action arising under the customs and traditions of the CCTHITA tribal community affecting family or child welfare, which involves:
  - a. A child who is enrolled or is eligible for enrollment in the Central Council of Tlingit and Haida Tribes of Alaska, regardless of the child’s residence or domicile; or
  - b. Any other Indian child with the consent of all parties.
- 2. The Child and Family Court shall have jurisdiction over adults in furtherance of its powers under this statute. The Court may issue such orders as are necessary for the welfare of the children and their families.
- 3. The jurisdictional limitations contained in this chapter do not reflect the Tribe’s view as to the legally permissible limits of jurisdiction. The limitations are designed to limit tribal activity in accordance with tribal priorities and resources.

**B. Concurrent Jurisdiction:** Whenever state, federal, or other tribal courts have jurisdiction over any matters provided for in this statute, the Child and Family Court has concurrent jurisdiction over the same matters.

**C. Notice to Other Tribes:** Active efforts shall be made to determine whether the child is a member or eligible for membership in another Tribe. If the Child and Family Court has reason to believe that a child who is the subject of a proceeding under this chapter is a member or eligible for membership in another Tribe, notice of the proceeding shall be given to the other Tribe. The notice shall request a written response within fifteen (15) days indicating whether the other Tribe intends to act in the matter.

**D. Transfer of Jurisdiction:** The Child and Family Court has the authority to accept transfer of jurisdiction from other courts or government

agencies. The Court shall only transfer a case under this chapter to another court pursuant to the following procedures:

1. In cases where more than one government has an interest in a proceeding and a motion for transfer of jurisdiction has been received, or on motion of the Child and Family Court, if the Court determines that a transfer of jurisdiction to the other court may be in the best interest of the child, the Court shall hold a hearing upon notice to all parties.
2. The Child and Family Court shall weigh the following factors and decide whether or not compelling reasons exist to transfer jurisdiction:
  - a. The wishes of the parent, custodian, or guardian;
  - b. The wishes of a child, if he or she is able to understand the meaning of a transfer of jurisdiction;
  - c. The recommendation of tribal social and health services staff;
  - d. The place each party lives and their tribal status;
  - e. The ties and contacts each party has with the communities involved;
  - f. The stage of the proceedings in each of the courts with a claim to jurisdiction at the time the motion is brought;
  - g. Whether the other court has timely responded to the notice of the CCTHITA Child and Family Court;
  - h. Whether the other court or government has previously declined to accept, or failed to accept, a transfer of jurisdiction over the child.

**Sec. 04.01.006 Sovereign Immunity**

Nothing in this statute shall diminish, impair, or be construed to waive the right of CCTHITA to assert the defense of sovereign immunity, and nothing contained herein shall impair the validity of this defense; and the right to assert that defense is and shall remain inviolable.

**Sec. 04.01.007 Confidentiality of Records and Proceedings**

- A. All child protection cases shall be considered and treated as confidential. Hearings shall be closed. All Tribal Court Judges, the Tribal Court Clerk,

tribal employees who participate in a case, and involved agency personnel shall maintain confidentiality.

- B.** All records of proceedings are strictly confidential and shall be retained in accordance with the CCTHITA Records Retention policy for ICWA records. Records of proceedings may be released only:
1. By an order of the Child and Family Court; or
  2. Upon written request to the Chief Judge by named parties to action or a member of the Tribal Court Bar representing a party to the action.

**Sec. 04.01.008 Rights of Parties**

- A.** In all proceedings under this statute, the parties shall have the right:
1. To have a spokesperson advise and represent them at their own expense;
  2. To request a continuance of the proceeding in order to seek legal representation;
  3. To have the opportunity to subpoena witnesses;
  4. To have the opportunity to introduce, examine, and cross-examine witnesses;
  5. To have the opportunity to discover, offer, and inspect evidence;
  6. To have the opportunity to present arguments and statements; and
  7. To not be a witness against themselves.
- B.** Our clan system is and remains a part of the child, even when the child is raised outside the clan. The child is still related. Traditionally, a child stayed within a clan house, first with Auntie (Tl'aak'w) then with Aat. We never had orphans; we took care of our own. If the child grows up with knowledge and experience of the clan system, he or she knows the importance of their place within the clan. The opposite clan was always available to take in a child, but only if there is no one available from the child's clan. This was the traditional placement preference.
1. Every child is essential to the tribal community, clan and extended family.
  2. Our clans are matrilineal. The child has a right to know and rely upon his or her Tlingit and Haida matrilineal heritage.
  3. Children should be protected and cared for by adults who are willing and able to meet their spiritual, physical, mental, and emotional needs.
  4. Children should have the opportunity to learn about their cultural heritage and clan identities, through time with elders and tradition-bearers, art, dance, music, stories, and subsistence activities.

5. Children deserve healthy relationships with parents, siblings, grandparents, aunts, uncles, and cousins on both sides of the family.
6. Children deserve to grow up free from violence and emotional abuse in their home.
7. Whenever possible, children should remain in the community where they can be around family, extended family, and clan members. The custodian of a child unable to remain in the community has a responsibility to ensure cultural continuity in the child's upbringing and the maintenance of the child's ethnic, cultural, spiritual, and linguistic education.
8. Children capable of forming their own views have the right to express those views and their views will be given due weight in accordance with their age and maturity.
9. Each side of the family and extended family has a responsibility to respect the right of the child to have a relationship with the other side of the family. However, the value of maintaining those relationships may be outweighed by the necessity of protecting a child from family violence or abuse.

C. Children should have and know their Tlingit or Haida names, be able to introduce themselves properly, and be enrolled as tribal members. There is no right to a jury trial in any proceeding under this statute.

**Sec. 04.01.009 Procedure for Hearings**

All proceedings under this statute are civil proceedings. Except as otherwise provided in this statute, hearings shall be governed by CSC 06.20. - 06.24. et. al.

- A. **Parties.** The following may be a party to actions under this statute:
  1. The petitioner;
  2. The child;
  3. The child's parent(s);
  4. The child's guardians(s) or custodian(s);
  5. The presenting officer or other designated representatives of CCTHITA;
  6. Any Tribe in which the child is enrolled or eligible for enrollment; and
  7. Any person the Court deems necessary for proper adjudication or is in the best interest of the child.
- B. **Notice**
  1. No hearing shall go forward without written notice to all parties, unless otherwise provided in this statute.
  2. The notice of hearing shall include:

- a. The nature of the proceeding and name of the court;
- b. The date, time, and place of the hearing;
- c. Instructions for response to the petition, when applicable; the name and address of the court with which responses and other pleadings must be filed; the names and addresses of all parties on whom responses and other pleadings must be served; and the manner by which filing and service must be accomplished; and
- d. A copy of the petition

**C. Service**

- 1. All notices of hearing shall be served by the Clerk of Court by regular mail, postage pre-paid to the parties last known address, unless otherwise provided in this statute and except as follows:
  - a. Notice of the Emergency Custody Order shall be served in accordance with CSC 04.03.001;
  - b. Notice of the First Hearing shall be served in accordance with CSC 04.03.001
  - c. Notice of the Adjudication Guardianship, Termination, and Adoption Hearings shall be served on the child's parents and guardians by personal service or certified mail, return receipt requested.
- 2. All other pleadings (including reports) shall be filed with the Court and served on all parties no later than five (5) business days prior to the scheduled hearing, unless otherwise ordered by the Court. Any party may submit reports or other pleadings by filing them with the Court. Any document filed with the Court must be served by the submitting party on all other parties at least three (3) days prior to the hearing, following the procedure set forth in this section, unless otherwise provided in this statute. Written answers, if any, to such reports and pleadings may be filed and served one (1) day prior to the hearing.
- 3. Service is not complete until an Affidavit, Declaration, or Certificate of Service has been filed with the Court. The Court may order an alternate method of service.

**Sec. 04.01.010 Recognition of Foreign Judgments**

The Child and Family Court may give recognition to orders issued by a state or another tribal court if the order does not violate the Indian Child Welfare Act and the court granting the order had jurisdiction over the case, due process was afforded to all parties, and the order does not violate the public policy of the Central Council of Tlingit and

Haida Indians of Alaska. Any party seeking recognition of a foreign judgment shall follow the procedures set out in CSC 10.05.002.

**Sec. 04.01.011            Orders**

The Court shall have the authority to issue all orders necessary to ensure the safety of the children within the jurisdiction of the tribe, including the issuance of subpoenas, orders of restriction, warrants for protective custody, and such other orders that may be appropriate. All actions brought under this title shall be decided by the Court in accordance with CCTHITA's laws, customs and traditions.

**Sec. 04.01.012            Interim Orders to Protect the Child During Transfer Proceedings**

The Court may make any orders that will protect the child, pending the outcome of any transfer of jurisdiction proceeding.

## Chapter 02. Child In Need of Care

<b>Sec. 04.02.001</b>	<b>Procedures and Guidelines</b>
<b>Sec. 04.02.002</b>	<b>Child in Need of Care</b>
<b>Sec. 04.02.003</b>	<b>Reporting Abuse and Neglect</b>
<b>Sec. 04.02.004</b>	<b>Immunity</b>
<b>Sec. 04.02.005</b>	<b>Failure to Report and False Reporting</b>
<b>Sec. 04.02.006</b>	<b>Contents of the Report</b>
<b>Sec. 04.02.007</b>	<b>Role of the Tribal Family and Youth Services Department</b>
<b>Sec. 04.02.008</b>	<b>Role of the Family Caseworker</b>
<b>Sec. 04.02.009</b>	<b>Court Appointed Special Advocates (CASA)</b>
<b>Sec. 04.02.010</b>	<b>Tribal Administrative Review Commission</b>

### **Sec. 04.02.001 Procedures and Guidelines**

The Tlingit and Haida people have always protected children and assisted families in accordance with Traditional laws. The written procedures in this statute are meant to better coordinate the services the Tribe offers children and families, and to facilitate cooperation between the Tribe and other governments, persons, and entities toward the mutual goal of providing for the safety and well-being of the Tribe's children.

When there is a question of whether a child is in need of care, the presumption shall be in favor of providing protection for the child. Separation of children from their parents should be seen as a last resort, and when such separation is necessary for the safety and well being of the child, the primary goal is successful reunification of children with their parents.

This statute does not address situations where a person who is under eighteen (18) years of age has committed an act which if committed by an adult would constitute a crime or for which a penalty is provided under tribal law.

The Tribal Family and Youth Services Program, herein after TFYS, is empowered to develop or adopt standards and procedures for achieving the purposes of these sections. TFYS is encouraged to make use of models, indicators, guidelines, protocols, manuals, textbooks, and other social work aids developed by qualified researchers and practitioners provided they are consistent with Tlingit and Haida Traditional laws and this statute, and to seek the guidance of qualified elders, historians, or other Tribal representatives.

### **Sec. 04.02.002 Child in Need of Care**

Traditional custom recognizes that a parent may need to place a child with another caregiver temporarily. This is not in itself grounds for a child in need of care action, provided the placement is intended to be temporary and the designated caregiver is adequately caring for the child.

A "child in need of care" is an unmarried person under the age of eighteen (18) years who meets one or more the following criteria:

- A. Has no parent, guardian, or custodian available and willing to care for the child or has been abandoned;
- B. Has suffered or is likely to suffer a physical injury, inflicted upon him/her by other than accidental means, which causes or creates a substantial risk of death, disfigurement, or impairment of bodily function;
- C. Whose parent, guardian, or custodian has not, for reasons other than poverty, provided adequate food, clothing, shelter, medical care, education, or supervision necessary for the child's health and well being;
- D. Who has been sexually abused or exploited by a parent, guardian, or custodian, either intentionally or negligently;
- E. Who has committed delinquent acts as a result of parental pressure, guidance, approval, approval, or failure to properly supervise;
- F. Who has been emotionally abused or emotionally neglected; or
- G. Who is born addicted to alcohol or exposed to a controlled substance, which has resulted in physical or mental harm to the child.

**Sec. 04.02.003 Reporting Abuse and Neglect**

The care of children is both a family and tribal responsibility.

- A. **Voluntary reporting:** Any member of the tribal community and any persons residing within the jurisdiction of the Tribe, including tribal staff, having a reasonable belief that a child has been abused or neglected may file a report that a child is in need of care.
- B. **Mandatory reporting:** Reporting is mandatory for tribal employees and contractors with the Tribe who perform services to the community in the areas of education, health and human services, child care, and law enforcement; members of the clergy; private child care providers; and anyone providing services to children, whether paid or volunteer, who have a reasonable belief that a child has been abused or neglected.

**Sec. 04.02.004 Immunity**

All persons who report child abuse or neglect in good faith and without malice are immune from civil liability for reporting the suspected abuse or neglect.

**Sec. 04.02.005 Failure to Report and False Reporting**

Any person who is required to report abuse or neglect under this statute, and who knowingly fails to report abuse or neglect, and any person who knowingly makes a false report of abuse or neglect may be subject to a civil fine not to exceed \$500.00, community service or both.

**Sec. 04.02.006 Contents of the Report**

A report shall include:



- A. The name, birth date, address, and tribal status of the child, if known; and
- B. A plain statement of the facts on which the report is based, including the date, time, and location of the events.

The name of the reporter may be kept confidential and not be disclosed at the reporter's request.

**Sec. 04.02.007            Role of the Tribal Family and Youth Services Department**

The Tribal Family and Youth Services Department has been established as a CCTHITA agency responsible for the provision of youth-related services.

**Sec. 04.02.008            Role of the Family Caseworker**

The Family Caseworker may:

- A. Provide assistance to families, using best case management practices, to prevent out of home placement and to reunite families.
- B. Prepare reports and appear in court as required under this statute and by the Court.
- C. Coordinate and communicate with all agencies and departments involved in the protection of children.
- D. Prior to the commencement of any child welfare proceeding in Child and Family Court, other than transfer proceedings from a state or other tribal court, make a preliminary determination whether the subject child is within the jurisdiction of the Tribe pursuant to this statute and investigate the child's circumstances to try and achieve resolution.
- E. Initiate child welfare proceedings in those cases where resolution cannot be achieved.
- F. Work with the CCTHITA Presenting Officer by providing relevant information needed to file petitions for children in need of care.
- G. Work cooperatively with state OCS workers when necessary to carry out the objectives of any state-tribal agreement.
- H. Take the lead role in finding appropriate placements for the child.
- I. As soon as possible, notify the parent(s), guardian(s), or custodian(s) of the placement if they are unaware that the child has been placed out of the home, but the location of the placement shall not be released, if, in the determination of the Family Caseworker, release of that information would endanger the child. The parent(s), guardian(s), or custodian(s) shall also be notified of their right to visit or be present with the child unless such visitation or presence has been determined to be against the child's safety and well-being, in which case the parent(s), guardian(s), or

custodian(s) shall be notified of their right to petition the Court for visitation rights.

- J.** Appear in state and other tribal courts as necessary.

**Sec. 04.02.009 Court Appointed Special Advocates (CASA)**

A Court Appointed Special Advocate, or CASA, is a person appointed by the Court to represent the best interests of a child. The Court shall appoint a CASA when a parent cannot exercise sound judgment on behalf of the child, unless no one is available to serve as a CASA.

**Sec. 04.02.010 Tribal Administrative Review Commission**

- A.** If the permanent placement for a child is agreed to by the Tribe does not fall within the placement preferences of the Indian Child Welfare Act, 25 U.S.C. §1911, or the child’s family does not agree with the recommended placement, then the TARC shall review the Tribe’s position. A written request for an administrative review is governed by the policies and procedures of the TFYS Department.
- B.** “Permanent placement” shall mean a final placement for the child including, adoptions, legal guardianship, or return to the parent.

## Chapter 03. Emergency Placement of a Child

Sec. 04.03.001	Emergency Custody Orders
Sec. 04.03.002	Request for Child Safety Hearing
Sec. 04.03.003	Child Safety Hearing – Time, Notice
Sec. 04.03.004	Child Safety Hearing – Order of Proceeding
Sec. 04.03.005	Placement Preferences for Out-of-Home Placement
Sec. 04.03.006	Scheduling Subsequent Proceedings at Child Safety Hearing Hearing
Sec. 04.03.007	Review

### Sec. 04.03.001 Emergency Custody Orders

- A. **Petition:** The Presenting Officer may file a petition for an Emergency Custody Order. If the Presenting Officer is not available to file such a request, any person that has personal knowledge through direct observation that a child is in an emergency situation that may more likely than not result in substantial physical or emotional harm may file a petition for an Emergency Custody Order.
- B. **Hearing:** The Child and Family Court judge shall convene an Emergency Hearing within forty-eight (48) hours to determine whether to grant the Emergency Custody Order. The Court may issue an Emergency Custody Order upon an oral or written statement of fact showing probable cause to believe that a child is in need of care and that his or her health, safety, and welfare will be seriously endangered if not taken into custody.
- C. **Order:** If the Court determines that there is probable cause to believe that the child is a child in need of aid and is in such condition or surroundings that the child's welfare requires the immediate assumption of custody, the Court may immediately issue an Emergency Custody Order. The order shall specifically name the child to be taken into custody, state the time and date issued, the place where the child is to be taken, and the name of the person or persons authorized to take the child into custody. The order shall be signed by the judge. An Emergency Custody Order may be transmitted by the judge via telephone, computer, or fax, if the judge, the parties, and the person requesting the Emergency Custody Order cannot be at the same location. Orders so transmitted shall be followed as soon as practical by a signed, original order.
- D. **Service and Duration:** An Emergency Custody Order must be executed within twenty-four (24) hours from the time the judge issues it. The child taken into custody under such an order may be released into the custody of their parent(s), guardian(s), or custodian(s) or held until the conclusion of the Child Safety Hearing or as ordered by the Court. The Emergency Custody Order must be served upon the child's parents, guardian(s), or

custodian(s) upon taking the child into custody or as soon as possible thereafter.

**Sec. 04.03.002 Request for Child Safety Hearing**

A person or agency that takes emergency custody of a child shall file within forty-eight (48) hours a request for a Child Safety Hearing with the Court. TFYS may also file a request for a Child Safety Hearing when seeking temporary custody and removal of a child.

The request shall include:

- A. The name, date of birth, permanent address, and tribal status of the child and his or her parent(s), custodian(s), or guardian(s);
- B. Facts establishing the Court's jurisdiction;
- C. A statement of facts which supports the allegation that the child is in need of care; and
- D. The location of the child, and the date and time taken into custody. The location of the child does not have to be shared with the parent if it would endanger the child.

**Sec. 04.03.003 Child Safety Hearing – Time, Notice**

Within three (3) days of taking a child into emergency custody, the Court shall convene a hearing. When emergency custody has not been taken, the Court shall convene a hearing within a reasonable time following the filing of a request.

Written notice, as provided in Section 04.01.009, shall be served on all parties no later than twenty four (24) hours before the hearing unless good cause, including the inability to locate the parents, prevents such notice. If the parent(s), guardian(s), or custodian(s) do not appear at the hearing, the Court may order a recess to try to find them.

**Sec. 04.03.004 Child Safety Hearing – Order of Proceeding**

- A. The tribal status of the child;
- B. Whether there is probable cause to believe the child is in need of care;
- C. The best interest of the child and the Tribe with regard to any action to be taken;
- D. Whether out-of-home placement shall be continued for the protection of the child or if the child can safely be returned to the home;
- E. Whether the child will be made a ward of the Court;

Whether in home supervised placement will be allowed;

- F. Whether interim orders for the protection of the child and the family should be made while further proceedings are being considered. Interim orders may include restraining orders and orders that parties be evaluated for substance abuse, mental illness, and emotional disturbance and that the recommendations of evaluators be followed. The Court may also order parenting classes, mandatory school attendance, visitation, and other

services or activities for the benefit of the child and the family. The Court may make a particular placement conditional on compliance with any of its orders.

- G. The parties shall be ordered to keep the Court informed as to any changes in their whereabouts and mailing addresses.

**Sec. 04.03.005 Placement Preferences for Out-of-Home Placement**

If a child is placed out-of-home, the following placement preferences shall be observed, in order:

- A. In the home of a member of the child’s immediate, extended or clan family, whether or not the home is a licensed foster home;
- B. In the home of a member of the child’s tribe;
- C. In the home of a person from another tribe; or
- D. In emergency placements, in a licensed foster home, or other safe place.

Placement of a child with anyone who is not a member of CCTHITA or who does not reside in a CCTHITA community shall be contingent on the person’s written agreement to consent and submit to the jurisdiction of the CCTHITA Child and Family Court and to cooperate fully with local law enforcement and the TFYS program.

TFYS will be responsible for conducting a preliminary investigation of an out-of-home placement to ensure the safety of the child.

**Sec. 04.03.006 Scheduling Subsequent Proceedings at Child Safety Hearing Hearing**

If it appears that a petition for Adjudication will soon be filed, based on the findings at the Child Safety Hearing, the Court shall set a time and date for a Pretrial Conference, an Adjudication Hearing and a meeting between the parties. The Court shall notify the parties at the conclusion of the Child Safety Hearing. Notice of the scheduled proceedings shall be provided to any party who was not present at the Child Safety Hearing.

**Sec. 04.03.007 Review**

- A. If circumstances relating to the child’s placement change pending adjudication or disposition, any party may request that the Court review the temporary custody or supervision order.
- B. When a party seeks the return of a child to the child’s home pending adjudication or disposition, if the party makes a prima facie showing that removal is no longer necessary, the burden of proof shift to TFYS as described below:
  - 1. The Court shall restore the child to the child’s parent or Indian custodian unless TFYS proves by a preponderance of the evidence that removal from the parent or custodian is still necessary to prevent imminent physical damage or harm to the child.

## **Chapter 04. Pretrial Conferences**

<b>Sec. 04.04.001</b>	<b>Pretrial Conference and Meeting of Parties</b>
<b>Sec. 04.04.002</b>	<b>Purpose of Pretrial Conference</b>
<b>Sec. 04.04.003</b>	<b>Pretrial Conference, Time and Notice</b>
<b>Sec. 04.04.004</b>	<b>Pretrial Conference, Order of Proceeding</b>
<b>Sec. 04.04.005</b>	<b>Confirming Adjudication Hearing at Pretrial Conference</b>

### **Sec. 04.04.001 Pretrial Conference and Meeting of Parties**

The Court shall conduct a Pretrial Conference to discuss the topics specified in CSC 04.04.004. Before the Pretrial Conference, the parties shall meet, either telephonically or in person, to ensure that an appropriate case plan is in place for the child and the family and to address the topics that will be discussed at the conference. The meeting will be held at time specified by the court or, if no time specified, at least fourteen (14) days before the Pretrial Conference. Parties who have appeared in the case are jointly responsible for submitting to the court within ten (10) days after the meeting a written summary of the meeting.

### **Sec. 04.04.002 Purpose of Pretrial Conference**

At the pretrial conference, the court and the parties may:

- A.** Consider efforts to locate and serve all parties;
- B.** Simplify the issues;
- C.** Discuss settlement;
- D.** Consider amendments to the pleadings;
- E.** Conclude any unresolved discovery matters;
- F.** Resolve pending motions;
- G.** Establish a reasonable time limit on time allowed for presenting evidence;  
and
- H.** Consider other matters that may aid in the resolution of the proceeding.

### **Sec. 04.04.003 Pretrial Conference, Time and Notice**

Within thirty (30) days but no more than forty five (45) days, of the conclusion of the Child Safety Hearing or upon acceptance of jurisdiction of a case transferred from another jurisdiction, the Court shall convene a Pretrial Conference. The Court shall also convene a second Pretrial Conference thirty (30) days prior to Adjudication Hearing. Written notice, as provided in Section 04.01.009, shall be served on all parties no later than twenty-four (24) hours before the hearing unless good cause, including the inability to locate the parents, prevents such notice. If the parent(s), guardian(s), or custodian(s) do not appear at the hearing, the Court may order a recess to try to find them.

**Sec. 04.04.004            Pretrial Conference, Order of Proceeding**

- A.**     The tribal status of the child;
- B.**     Whether there is probable cause to believe the child is in need of care;
- C.**     The best interest of the child and the Tribe with regard to any action to be taken;
- D.**     Whether out-of-home placement shall be continued for the protection of the child or if the child can safely be returned to the home;
- E.**     Whether the child will be made a ward of the Court;
- F.**     Whether interim orders for the protection of the child and the family should be in effect while further proceedings are being considered.
- G.**     The parties shall be ordered to keep the Court informed as to any changes in their whereabouts and mailing addresses.

**Sec. 04.04.005            Confirming Adjudication Hearing at Pretrial Conference**

If it appears that an Adjudication Hearing is still necessary, based on the findings at the Child Safety Hearing and the Pretrial Conferences, the Court shall confirm the time and date of the Adjudication Hearing and shall notify the parties at the conclusion of the second Pretrial Conference. Notice of the Adjudication Hearing shall be provided to any party who was not present Pretrial Conference.

## Chapter 05. Adjudication Hearings

<b>Sec. 04.05.001</b>	<b>Purpose</b>
<b>Sec. 04.05.002</b>	<b>Contents and Filing of the Petition</b>
<b>Sec. 04.05.003</b>	<b>Time and Notice of Hearing</b>
<b>Sec. 04.05.004</b>	<b>Evidence and Burden of Proof</b>
<b>Sec. 04.05.005</b>	<b>Agreed Order</b>
<b>Sec. 04.05.006</b>	<b>Adjudication Report</b>
<b>Sec. 04.05.007</b>	<b>Judgment</b>
<b>Sec. 04.05.008</b>	<b>Failure of Proof</b>
<b>Sec. 04.05.009</b>	<b>Orders Pending Disposition</b>
<b>Sec. 04.05.010</b>	<b>Costs of Support</b>

### **Sec. 04.05.001 Purpose**

The Court shall conduct an Adjudication Hearing to determine whether a child is in need of care. An Adjudication hearing shall be completed within 180 days after the date of removal unless the Court finds good cause to continue the hearing. When determining whether to grant a continuance for good cause, the Court shall take into consideration the age of the child, and the potential adverse effects that the delay may have on the child. The Court, at the conclusion of the hearing, as the circumstances of the case may require, shall find that the child is or is not a child in need of aid.

### **Sec. 04.05.002 Contents and Filing of the Petition**

A designated Presenting Officer or other person authorized by the Tribe shall file a petition for an Adjudication Hearing. The petition must be filed with the Court within twenty (20) days from the conclusion of the Child Safety Hearing. If a case is transferred from state court, a Presenting Officer must file a petition within ten (10) days from the date the Child and Family Court accepts jurisdiction. The Petition shall include:

- A.** The name, date of birth, permanent address, and tribal status of the child and his or her parent, custodian, or guardian;
- B.** The facts establishing the Court's jurisdiction;
- C.** A detailed statement of the facts and reasons which supports the allegation that the child is in need of care. If a request for a First Hearing was filed, it may be incorporated in this petition;
- D.** The location of the child and the time taken into custody. The location of the child does not have to be disclosed if it would endanger the child; and
- E.** The projected final date the Court can schedule an Adjudication Hearing.

### **Sec. 04.05.003 Time and Notice of Hearing**

The Court shall set the date for the hearing to take place within fourteen (14) days of the date the petition is filed. Service of the Notice of Hearing shall be as provided in CSC 04.01.009.



**Sec. 04.05.004 Evidence and Burden of Proof**

The Rules of Evidence shall be the same as those that apply to civil actions before Tribal Court in accordance with CSC 06.22.001 et al. The petitioner has the burden of proving by a preponderance of the evidence that the child is a child in need of aid.

**Sec. 04.05.005 Agreed Order**

The parties to an Adjudication Hearing may agree to a proposed order that resolves some or all of the issues of the case. Before deciding whether to approve the agreed order, the judge may hold a private ex parte discussion with the parent, custodian, or guardian to:

- A. Explain the proposed agreed order in detail and the consequences of failing to comply with the agreed terms;
- B. Assure that consent to the proposed order is not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person;
- C. Explain the right to a spokesperson or counsel;
- D. Explain that the Tribe has the burden of proving the allegations in the petition and that agreement to the proposed order is not mandatory;
- E. Explain that once there is agreement to the proposed order, and the order is signed and entered by the Court, it is too late to change position.

If the Court holds an ex parte meeting with the parent, custodian, or guardian, the conversation will be recorded. If the party wants a friend, family member, or other people to be present, the judge may allow it after first speaking alone with the party. If the Court finds that any consent was the result of fraud or duress, the agreed order shall be vacated.

**Sec. 04.05.006 Adjudication Report**

TFYS shall file and serve an Adjudication Report no later than five (5) days prior to the Adjudication Hearing. In the report, TFYS shall describe its tribal case plan for the child and shall provide a detailed statement of the facts and circumstances supporting the plan.

**Sec. 04.05.007 Judgment**

At the conclusion of the Adjudication Hearing, the Court shall make findings of fact and enter judgment that the child is or is not a child in need of aid. If the Court finds that the child is a child in need of aid, the court shall:

- A. Order the child committed to TFYS custody for placement in an appropriate setting for a period of time not to exceed two (2) years or
- B. Order the child to be released to a parent, adult family member, adult clan member, or guardian of the child, and in appropriate cases, order the parent, adult family member, adult clan member, or guardian to provide medical or other care and treatment; if the Court releases the child, it shall direct TFYS to supervise the care and treatment given to the child, but the may dispense with TFYS's supervision if the Court finds that the adult to

whom the child is released will adequately care for the child without supervision; TYFS's supervision may not exceed two (2) years; or

- C. Order, under the grounds specified in CSC 04.06.008, the termination of parental rights and responsibilities of one or both parents and commit the child to the custody of TFYS, and TFYS may report every six (6) months, or as ordered by the Court, the efforts being made to find a permanent placement for the child.

**Sec. 04.05.008 Failure of Proof**

If the Court finds that the child is not in need of aid, it shall immediately order the child released from TFYS custody and returned to the child's parents, guardian, or custodian.

**Sec. 04.05.009 Orders Pending Disposition**

If the Court finds that the child is a child in need of aid and the disposition hearing is not held immediately following the adjudication, the court shall enter the following orders:

- A. The Court shall order the child placed in the temporary custody of TFYS or order the child returned to the home with supervision by TFYS pending disposition.
- B. The Court shall set a time for the disposition hearing, which will be held without unreasonable delay but no later than ninety (90) after the conclusion of an Adjudication Hearing.

**Sec. 04.05.010 Costs of Support**

If an out-of-home placement is ordered, the child's parents or guardian from whom the child was removed may be ordered to provide support for the child. Payments, in-kind goods, or services shall be made to the Tribal Child Support Unit (TCSU) and released to the person or agency having physical custody of the child for the benefit of the child, or otherwise coordinated by TFYS. TCSU shall coordinate the receipt and distribution of support contributions.

## Chapter 06. Disposition Hearings

<b>Sec. 04.06.001</b>	<b>Purpose</b>
<b>Sec. 04.06.002</b>	<b>Statements</b>
<b>Sec. 04.06.003</b>	<b>Predisposition Report</b>
<b>Sec. 04.06.004</b>	<b>Family Protection Plan</b>
<b>Sec. 04.06.005</b>	<b>Requirements for Disposition</b>
<b>Sec. 04.06.006</b>	<b>Findings</b>
<b>Sec. 04.06.007</b>	<b>Disposition Order, Subsequent Proceedings</b>
<b>Sec. 04.06.008</b>	<b>Initial Custody Review and Continued Custody Hearings</b>

### **Sec. 04.06.001 Purpose**

The purpose of a disposition hearing is to determine the appropriate placement of a child who has been adjudicated a child in need of aid. A disposition hearing concerning the termination of parental rights is governed by CSC 04.08.001 et al.

### **Sec. 04.06.002 Statements**

The parties may offer evidence in aid of disposition at the hearing. The Court shall afford the parties, any other relatives the Court deems helpful, and any foster parents or other out-of-home care providers an opportunity to be heard.

### **Sec. 04.06.003 Predisposition Report**

TFYS shall file and serve a Predisposition Report no later than five (5) days prior to the Disposition Hearing. In the report, TFYS shall (1) describe its permanency plan for the child, (2) provide a detailed statement of the facts and circumstances supporting the plan, and (3) recommendations regarding the disposition which would be in the best interests of the child.

### **Sec. 04.06.004 Family Protection Plan**

The Family Caseworker may convene a family meeting to include the child's family in the development of a Family Protection Plan. The Family Caseworker shall prepare a written Family Protection Plan describing recommendations for the care of the child and assisting the child's family. The plan shall explain why the recommendations are necessary and the benefits of the plan to the child and the family. The plan shall fully explain any recommendations for out-of-home placement of the child. The experts consulted, including the opinions of extended family members, para-professionals, and elders from the child's clan, may be cited in the plan. The Family Caseworker shall file the plan with the Court and provide copies to all parties at least five (5) days before the Disposition Hearing.

### **Sec. 04.06.005 Requirements for Disposition**

A disposition hearing may not be held before adequate information is available upon which to enter an informed disposition order. If the child has been placed outside the home, the Court cannot enter a disposition order if the court finds reasonable efforts have not been met. If the Court finds that TFYS has failed to make reasonable efforts, the Court must postpone entering a disposition order until the Court find that reasonable

efforts have been made. The child should remain in temporary custody pending disposition.

**Sec. 04.06.006 Findings**

- A. A disposition order must be accompanied by findings of fact.
- B. The Court may approve the removal of a child from the child's home only if the Court finds that continued placement in the home is contrary to the welfare of the child.

**Sec. 04.06.007 Disposition Order, Subsequent Proceedings**

- A. If the Court orders the child committed to TFYS custody under CSC 04.05.007(A), the disposition order must set the date for a Permanency Hearing within twelve (12) months after the child's date of removal. If the Court releases the child under CSC 04.05.007(B), the disposition order must set the date for filing a report on annual review.

**Sec. 04.06.008 Initial Custody Review and Continued Custody Hearings**

- A. The Court shall schedule an Initial Custody Review Hearing no later than six (6) months from the child's date of removal.
- B. At the conclusion of the Initial Custody Review Hearing, the Court shall schedule a Continued Custody Hearing to review the child's placement at least once every six (6) months, or earlier upon motion of any party. The Court shall review whether the parties are complying with the order and shall consider whether modification is necessary to protect the child and strengthen the family.
- C. The Court shall review at each custody hearing the following factors:
  - 1. Safety of the child;
  - 2. Determine the need for continued placement;
  - 3. Discuss if the parent are following the Tribal Case Plan;
  - 4. Evaluate the extent of progress made towards making possible for the child to return home;
  - 5. Estimate the extent of progress made toward making it possible for the child to return home; and
  - 6. Estimate a date that the child may be returned home or placed in another permanent placement.

## Chapter 07. Permanency Hearing

<b>Sec. 04.07.001</b>	<b>Purpose and Timing of the Hearing</b>
<b>Sec. 04.07.002</b>	<b>Notice</b>
<b>Sec. 04.07.003</b>	<b>Report</b>
<b>Sec. 04.07.004</b>	<b>Findings</b>
<b>Sec. 04.07.005</b>	<b>Cultural Continuity Agreement</b>
<b>Sec. 04.07.006</b>	<b>Change in Permanency Plan</b>
<b>Sec. 04.07.007</b>	<b>Subsequent Review</b>

### **Sec. 04.07.001 Purpose and Timing of the Hearing**

The purpose of the Permanency Hearing is to establish a permanency plan (reunification, adoption, legal guardianship, placement with a relative, or another planned permanent living arrangement) for each child committed to tribal supervision and to ensure that findings with respect to the plan made required tribal and federal law. The permanency hearing must be held within twelve (12) months after the child's date of removal; or (2) upon application by a party, when good cause is shown.

### **Sec. 04.07.002 Notice**

The Court or the party requesting the Permanency Hearing shall notify the parties of the time set for the hearing, the right to submit statements, affidavits or other evidence to the Court. TFYS shall notify the foster parent or other out-of-home care provider of the time set for the hearing and the right to participate in the hearing. A party seeking a continuance of a scheduled hearing must provide reasons for the request. The Court may not grant a continuance of a scheduled hearing absent a finding of good cause.

### **Sec. 04.07.003 Report**

TFYS shall file and serve a permanency report no later than five (5) days prior to the Permanency Hearing. In the report, TFYS shall describe its permanency plan for the child and shall provide a detailed statement of the facts and circumstances supporting the plan.

### **Sec. 04.07.004 Findings**

The Court shall make written findings, including findings related to:

- A.** Whether the child continues to be a child in need of aid;
- B.** Whether the child should be returned to the parent or guardian, and when;
- C.** Whether the child should be placed for adoption or legal guardianship and whether TFYS has filed a petition for termination of parental rights;
- D.** In the case of a child who has attained age sixteen (16) the services needed to assist the child to make the transition from foster care to independent living or adult protective services;
- E.** Whether the parent or guardian has made substantial progress to remedy the parent's or guardian's conduct or conditions in the home that made the child a child in need of aid;

- F.** If the permanency plan is for the child to remain in out-of-home care, whether the child's out-of-home placement continues to be appropriate and in the best interests of the child; and
- G.** Whether TFYS has made reasonable efforts to finalize the permanency plan that is in effect.

If the court is unable to make a finding required under this subsection, the court shall schedule and hold another permanency hearing within a reasonable period of time.

**Sec. 04.07.005 Cultural Continuity Agreement**

A Cultural Connection Agreement is a binding contract between a guardian and the Tribe that ensures a child remains connected with his or her culture and traditions.

**Sec. 04.07.006 Change in Permanency Plan**

If the permanency plan established by the Court changes after the permanency hearing, TFYS shall promptly apply to the Court for another permanency hearing, and the Court shall conduct the hearing within thirty (30) days after application by TFYS.

**Sec. 04.07.007 Subsequent Review**

The Court shall hold a hearing to review the permanency plan every six (6) months until successful implementation of the plan.

## Chapter 08. Guardianship

Sec. 04.08.001	Purpose
Sec. 04.08.002	Petition for Guardianship – Who May File
Sec. 04.08.003	Petition – Contents
Sec. 04.08.004	Setting the Hearing
Sec. 04.08.005	Guardian Home Study Report
Sec. 04.08.006	Additional Reports
Sec. 04.08.007	Guardianship Hearing
Sec. 04.08.008	Burden of Proof
Sec. 04.08.009	Grounds for Appointing a Guardian
Sec. 04.08.010	Placement Preference
Sec. 04.08.011	Enrollment Prior to Appointment of Guardian
Sec. 04.08.012	Powers of Guardian
Sec. 04.08.013	Cultural Continuity Agreement
Sec. 04.08.014	Protection of a Child’s Property
Sec. 04.08.015	Removal of Guardian for a Child’s Property
Sec. 04.08.016	Change of Address
Sec. 04.08.017	Visitation
Sec. 04.08.018	Termination of Guardianship

### Sec. 04.08.001 Purpose

It has long been the custom of CCTHITA that a child may be cared for by persons other than a parent, without excluding the parent from the child’s life. It is intended that these sections be applied with the flexibility for a variety of family situations and problems.

### Sec. 04.08.002 Petition for Guardianship – Who May File

Any person at least eighteen (18) years old may file a petition with the Child and Family Court requesting that he or she be appointed as the guardian of a child.

### Sec. 04.08.003 Petition – Contents

A petition for appointment of a guardian shall include:

- A. The name, birth date, residence, and tribal status of the child who is the subject of the petition;
- B. The name, birth date, residence, and tribal status, if known, of the child’s parent(s) and of the petitioner(s);
- C. If the child is residing with someone other than a parent, the location and length of time at that location; and
- D. A statement of facts supporting his or her request to be appointed as a guardian.

### Sec. 04.08.004 Setting the Hearing

When the Court receives the petition, it shall set a hearing date which shall not be more than forty (40) days after the Court received the petition, unless continued for good cause.

Service of the Notice of Hearing shall be as provided in Section 04.01.009.

**Sec. 04.08.005 Guardian Home Study Report**

For every guardianship petition, the petitioner shall provide the Court, or arrange for the Court to be provided, with a complete Guardianship Home Study Report including, but not limited to, a recommendation regarding the petitioners' financial ability to support the child; a complete home study and consultation with the child's parents; all health, education and social service personnel who have had prior professional contacts with the child. The guardianship report shall be in writing and contain the professional opinions of all persons consulted. The petitioner shall file and serve the report, as provided in CSC 04.01.009.

**Sec. 04.08.006 Additional Reports**

Any party may file and serve a report setting forth his or her recommendations regarding the guardianship, as provided in CSC 04.01.009.

**Sec. 04.08.007 Guardianship Hearing**

The hearing shall be private and closed. Only those persons the Child and Family Court finds to have a legitimate interest in the proceedings may attend. The Court shall hear testimony to determine whether a long-term guardianship is in the best interest of the child and the tribal community. The Court shall consider all guardianship reports submitted for review. All parties shall be given the opportunity to contest the factual contents and conclusions of the guardianship reports.

**Sec. 04.08.008 Burden of Proof**

The Court may appoint a guardian pursuant to CSC 04.08.009 when the conditions have been proved by a preponderance of the evidence presented regarding the following factors:

- A. Appointment of a guardian is in the best interest of the child and the tribal community; and
- B. The petitioner(s) can provide appropriate and adequate parental care for the child.

**Sec. 04.08.009 Grounds for Appointing a Guardian**

If the Child and Family Court finds that: (1) the child is without care or custody, (2) that the petitioner(s) can provide appropriate and adequate parental care for the child, and (3) that the guardianship is in the best interest of the child and the Tribe, the Court shall order guardianship pursuant to the petition. "Without care or custody" in this subsection means that:

- A. The child has been abandoned;
- B. The child has been found to be a "Child in Need of Care" in accordance with CSC 04.02.002;
- C. The child's parent(s) voluntarily agree, without duress and in the presence of the Child and Family Court judge, to the guardianship; or



- D. The child's parents are deceased. If the child's parents are deceased and have left a legal will nominating or otherwise recommending a guardian or other caretaker for the child, the parents' recommendation shall be honored by the Child and Family Court absent a specific finding based on clear and convincing evidence that the parents' recommendation would be detrimental to the best interest of the child.

**Sec. 04.08.010 Placement Preference**

The preference for appointment of a long-term guardian shall be:

- A. In the home of a member of the child's immediate, extended or clan family, whether or not the home is a licensed foster home;
- B. In the home of a member of the child's tribe;
- C. In the home of a person from another tribe; or
- D. A member of the CCTHITA community, which shall include persons living in or near a CCTHITA community who participate in tribal activities and are considered part of the tribal community, based on evidence presented at the hearing;
- E. If the above criteria cannot be met, for good cause shown, placement may be made with any person who has knowledge of and a desire to foster the child's tribal affiliation and special needs.

**Sec. 04.08.011 Enrollment Prior to Appointment of Guardian**

If a child is not enrolled but is eligible for enrollment or membership in an Indian Tribe, the Family Caseworker shall assist in making application for membership or enrollment of the child. If an objection to enrollment or membership is filed, the Court shall set the matter for hearing, notify the parent(s), and make a determination based on the best interests of the child.

**Sec. 04.08.012 Powers of Guardian**

- A. Unless otherwise ordered by the Court, a long-term guardian has all the rights and responsibilities of a parent whose parental rights have not been terminated or suspended, including but not limited to:
  - 1. The guardian shall insure that the child receives adequate off, clothing, health, and other professional care, shelter and education, as needed and appropriate;
  - 2. The authority to consent to marriage and to enlistment in the armed forces of the United States;
  - 3. The authority to consent to an adoption if there is no living parent or if all parental rights have been terminated by a court of competent jurisdiction;
  - 4. A guardian is responsible for the acts of the child. Legal liability for the acts of the child shall be limited to actual damages caused by the child when the child is living with the guardian(s);

5. A guardian may bring lawsuits on behalf of the child and otherwise represent the child in legal proceedings if expressly authorized to do so by the Court, on a case-by-case basis;
  6. The guardians have a duty to provide timely informed consent to necessary medical procedures, except sterilization;
  7. The guardianship does not affect the child's inheritance rights;
  8. A guardian may petition the court for authority to do any act which the guardian is uncertain of the scope of authority, and the Court may grant such authority after such notice and hearing, if any, as the Court may direct, if such appears consistent with the best interests of the child; and
  9. The authority to receive child support payments on behalf of the child.
- B.** The following shall require Court approval.
1. Sterilization.
  2. The enrollment of a child who is eligible for enrollment in CCTHITA in another tribe.
- C.** Unless otherwise ordered by the Court, the guardianship shall be subject to annual and continuing reviews by the Court.
- D.** Unless otherwise ordered by the Court, the guardianship shall not be subject to continuing supervision by TFYS.
- E.** A child shall not be removed from the custody of a guardian except under circumstances that would warrant removal if the guardian were the child's parent.

**Sec. 04.08.013 Cultural Continuity Agreement**

A Cultural Connection Agreement is a binding contract between a guardian and the Tribe that ensures a child remains connected with his or her culture and traditions.

**Sec. 04.08.014 Protection of a Child's Property**

The Court may appoint a person or financial institution to be the guardian of a child's property. This may be a different person than the guardian who provides direct care to the child.

**Sec. 04.08.015 Removal of Guardian for a Child's Property**

- A.** The Court has the power to remove a guardian for a child's property and appoint a replacement guardian whenever necessary for the child's best interest.
- B.** When a child whose property is in guardianship reaches the age of eighteen (18), the child may petition the Child and Family Court to terminate the guardianship and enter such orders as may be necessary to place the child in control of the child's property and earnings.

**Sec. 04.08.016 Change of Address**

Guardians shall immediately notify the Court, in writing, of any change of address.

**Sec. 04.08.017 Visitation**

The Court may order visitation between the child and parent(s) or any other person, in the best interest of the child and of the tribal community. The Court may specify in the order that supervision is required or may impose other requirements to protect the child.

**Sec. 04.08.018 Termination of Guardianship**

- A.** Generally, a guardianship shall terminate upon death, marriage, emancipation, adoption, or when the child reaches the age of eighteen (18), unless continued by the Court, or upon order of the Court.
- B.** Upon the petition of a parent of a child in long-term guardianship, the child may be returned to the parent, after notice and hearing, upon a showing by clear and convincing evidence that: (1) the parent is willing and able to resume permanent care of the child, (2) the child is not at risk of harm, and (3) that return to the parent is in the best interest of the child.
- C.** Guardians of tribal trusts shall serve until all trust funds have been distributed under the terms of the trust.

## Chapter 09. Creating Trust Accounts

**Sec. 04.09.001**            **Creating a Tribal Trust**

**Sec. 04.09.002**            **Existing Trusts**

**Sec. 04.09.001**            **Creating a Tribal Trust**

If a trust has not already been established to administer a child's property, the Court may create a trust for the benefit of a child and appoint CCTHITA as the trustee of the funds. The following rules apply to such trusts:

- A.**     The Tribe shall place the trust finds in a separate, safe, interest bearing account such as those used by the Tribe for its other funds. The account shall be a "blocked account" which allows disbursement only upon order of the Child and Family Court. The account shall be identified in the name of CCTHITA as trustee for the named child or children. The finds shall at times remain in the exclusive jurisdiction of the Tribe.
- B.**     The purpose of the trust shall be to preserve the principle and interest until the child is eligible to receive a share of the funds at the date of release from tribal custody.
- C.**     The child's guardian, appointed under CSC 04.08.012, shall be financially responsible for the child's needs and for arranging all available benefits and services for which the child is eligible. No portion of the trust funds may be disbursed prior to the child's date of release from tribal custody except upon a showing of extreme hardship to the child. The Tribe or the guardian may petition the Court in such a case to request a hearing. If the Court finds that extreme hardship to the child exists, and no other resources are available to meet the child's needs, it may order disbursement of a specified amount of funds for a specified purpose. The Court shall require a written accounting to be filed with the Court documenting all expenditures. If more than one disbursement will be necessary, such as monthly payments, the Court may so order.
- D.**     The Tribe shall provide the Court with an annual accounting of the trust and an accounting prior to and after any disbursement, including final distribution to a child upon the date of release from tribal custody.
- E.**     A child shall, on or after the date of release from tribal custody, petition the Court to order distribution of his share, free of trust. The child shall provide the Court with a certified copy of a birth certificate or an affidavit from tribal enrollment as proof of age.
- F.**     If there is more than one child whose funds are in the same trust, each child may petition for the respective share, with the remaining funds remaining in trust for those who have not been released from tribal custody.

- G.** If a child dies before being released from tribal custody reaching age, the child's respective share shall be paid to the child's estate. If the child's heirs are other children in the trust, the funds may remain in trust, subject to approval of the Court.
- H.** All funds, while held in trust under this section, are exempt from levy, execution, forfeiture, garnishment, seizure, lien, claim, bankruptcy, or encumbrance whatsoever; they cannot be assigned to another or used as collateral or security. Any agreement purporting to use or obligate funds in any of the foregoing ways is void.
- I.** The Tribe shall serve as trustee without compensation. Reasonable bank fees shall be payable from the trust funds.
- J.** The Tribe may petition the Court at any time to clarify its obligations under this section.
- K.** All records and files maintained in connection with this section shall be confidential.

**Sec. 04.09.002 Existing Trusts**

If the child's property is subject to a trust, the guardian is bound by the trust provisions. The Court has the power to review any trust in connection with appointment of a guardian and to impose any protections necessary to enforce the trust, to ensure that the guardian fully and regularly accounts for trust funds, and to oversee the funds are properly managed.

## Chapter 10. Termination or Relinquishment of Parental Rights

Sec. 04.10.001	<b>Purpose</b>
Sec. 04.10.002	<b>Petition for Termination or Relinquishment of Parental Rights – Who May File</b>
Sec. 04.10.003	<b>Petition – Contents</b>
Sec. 04.10.004	<b>Relinquishment Agreement</b>
Sec. 04.10.005	<b>Setting the Hearing</b>
Sec. 04.10.006	<b>Pre-Termination Report, Preparation</b>
Sec. 04.10.007	<b>Additional Reports</b>
Sec. 04.10.008	<b>Termination Hearing</b>
Sec. 04.10.009	<b>Grounds for Termination and Burden of Proof</b>
Sec. 04.10.010	<b>Consent</b>
Sec. 04.10.011	<b>Enrollment Prior to Termination</b>

### Sec. 04.10.001 Purpose

The CCTHITA has not traditionally provided for the termination of parental rights. It is currently the custom of the Tribe to view involuntary termination of parental rights as a last resort when it is clear that long-term guardianship is insufficient to meet the needs of the child and an adoption has been arranged.

### Sec. 04.10.002 Petition for Termination or Relinquishment of Parental Rights – Who May File

- A. **Voluntary Relinquishment Petition:** Any person at least eighteen (18) years old may file with the Court consent to allow the adoption of his or her child.
- B. **Involuntary Termination Petition:** Only the CCTHITA Presenting Officer or a designated representative of the Tribe may file a petition for involuntary termination of parental rights.

### Sec. 04.10.003 Petition – Contents

A petition for termination of parental rights shall include:

- A. The name, birth date, residence, and tribal status of the child who is the subject of the petition;
- B. The name, birth date, residence, and tribal status, if known, of the child's parent(s), guardian(s), or custodian(s);
- C. If the child is residing with someone other than a parent, the location and length of time at that location;
- D. A statement by the petitioner of the facts and reasons supporting the request; and
- E. A copy of the adoption petition filed in conjunction with the termination petition.

**Sec. 04.10.004 Relinquishment Agreement**

- A. A voluntary relinquishment must be in writing and signed by a parent, regardless of the age of the parent, in the presence of the Court. A copy of the relinquishment shall be provided to the parent.
- B. A voluntary relinquishment may be withdrawn within ten (10) days after it is signed. The relinquishment is invalid unless the relinquishment contains the right of withdrawal.
- C. A parent may retain privileges with respect to the child, including the ability to have future contact, communication and visitation with the child in a voluntary relinquishment executed under this section.

**Sec. 04.10.005 Setting the Hearing**

When the Court receives the petition, it shall set a hearing date which shall not be more than forty (40) days after the Court receives the petition, unless continued for good cause. Service of the Notice of Hearing shall be as provided in CSC 04.01.009.

**Sec. 04.10.006 Pre-Termination Report, Preparation**

For every termination petition, the Child Welfare Caseworker shall provide the Court, or arrange for the Court to be provided, with a Pre-Termination Report. The person preparing the report shall conduct a complete home study and shall consult with the child's parent(s); all health, education, and social service personnel who have had prior professional contact with the child; and with the petitioner(s) to determine whether termination of parental rights would be in the best interest of the child. The report shall be in writing and contain the professional opinions of all persons consulted. The Court may waive the requirement of a pre-termination report in cases where a parent is consenting, provided that all requirements for proper consent under this chapter have been met. The Family Caseworker shall file and serve the Pre-Termination Report, as provided in CSC 04.01.009.

**Sec. 04.10.007 Additional Reports**

Any party may file and serve a report setting forth recommendations regarding the proceeding, as provided in CSC 04.01.009.

**Sec. 04.10.008 Termination Hearing**

The hearing shall be private and closed. Only those persons the Court finds to have a legitimate interest in the proceedings may attend. In addition to the notice requirements of CSC 04.01.009, special efforts shall be made to locate the parent(s) whose rights may be terminated. The Court shall consider all reports submitted for review. All parties shall be given the opportunity to testify and to contest the factual content and conclusions of the Pre-Termination Report.

**Sec. 04.10.009 Grounds for Termination and Burden of Proof**

The Court may order termination of parental rights only when an appropriate adoptive home is available and an adoption petition has been filed in conjunction with the termination petition. In addition, the Court must first approve the parent's consent as

provided herein, or in cases of involuntary termination, the Tribe must prove by clear and convincing evidence each of the following:

- A. The child has been abandoned or is a “Child in Need of Care” as provided in CSC 04.02.002;
- B. Termination or relinquishment of parental rights and the adoption is in the best interest of the child and of the Tribe; and
- C. The Tribe has offered or helped arrange for appropriate resources to help the parent care appropriately for the child; and
- D. It is unreasonable to expect that the parent will ever be able to appropriately care for the child.

**Sec. 04.10.010 Consent**

Consent of a parent to terminate parental rights to a child is not valid unless:

- A. The parent is at least eighteen (18) years old;
- B. The parent has: (1) received counseling from an appropriate professional who has explained the consequences of terminating parental rights, (2) has explored all available services to help the parent care for the child, such as parenting classes and substance abuse treatment, and (3) has explored alternatives to termination and adoption, such as long-term guardianship;
- C. The parent orally explains his or her understanding of the effect of the termination of parental rights to the Court and the Court makes a specific finding that the terms and consequences of the consent were fully explained to and were fully understood by the parent; and
- D. The consent is given no sooner than thirty (30) days after the birth of the child. The child may be placed with the prospective adoptive parents or other caregiver during this thirty (30) day period.

Any consent may be withdrawn prior to the entry of a final decree of adoption and, if no other grounds exist for keeping the child from the parent, the child shall be returned to the parent.

**Sec. 04.10.011 Enrollment Prior to Termination**

If a child is not enrolled but is eligible for membership in an Indian Tribe, the Family Caseworker shall assist in making application for membership or enrollment of the child. If an objection to enrollment or membership is filed, the Court shall set the matter for hearing, notify the parent(s), and make a determination based on the best interest of the child.



## Chapter 11. Adoption

<b>Sec. 04.11.001</b>	<b>Petition for Adoption – Who May File</b>
<b>Sec. 04.11.002</b>	<b>Petition – Contents</b>
<b>Sec. 04.11.003</b>	<b>Availability for Adoption</b>
<b>Sec. 04.11.004</b>	<b>Persons Required to Consent to Adoption</b>
<b>Sec. 04.11.005</b>	<b>Persons as to whom Consent and Notice not required</b>
<b>Sec. 04.11.006</b>	<b>Execution of Consent</b>
<b>Sec. 04.11.007</b>	<b>Withdrawal of Consent</b>
<b>Sec. 04.11.008</b>	<b>Setting the Hearing</b>
<b>Sec. 04.11.009</b>	<b>Home Study Report</b>
<b>Sec. 04.11.010</b>	<b>Additional Reports</b>
<b>Sec. 04.11.011</b>	<b>Adoption Hearing</b>
<b>Sec. 04.11.012</b>	<b>Grounds for Entering Decree of Adoption</b>
<b>Sec. 04.11.013</b>	<b>Placement Preferences</b>
<b>Sec. 04.11.014</b>	<b>Enrollment Prior to Entry of Adoption Decree</b>
<b>Sec. 04.11.015</b>	<b>Cultural Continuity Agreement</b>
<b>Sec. 04.11.016</b>	<b>Denial of Adoption Petition</b>
<b>Sec. 04.11.017</b>	<b>Decree of Adoption</b>
<b>Sec. 04.11.018</b>	<b>Effect of Decree of Adoption</b>
<b>Sec. 04.11.019</b>	<b>Visitation</b>
<b>Sec. 04.11.020</b>	<b>Adoption Records</b>

### **Sec. 04.11.001      Petition for Adoption – Who May File**

Any person at least eighteen (18) years old may file a petition with the Court to adopt a child. If the petitioner is married, his or her spouse must also be at least eighteen (18) years old and must sign the petition, unless the spouse's whereabouts are unknown or waived by the Court.

“Spouse” for purposes of this section includes a partner to a relationship in which the partners undertake together to provide for the care, control, education, health, and welfare of the partners' minor children.

### **Sec. 04.11.002      Petition – Contents**

The adoption petition shall include:

- A.** The name, birth date, residence, and tribal status of the child who is the subject of the petition;
- B.** The name, birth date, place and duration of residence, and tribal status of the petitioner(s);
- C.** The name, birth date, residence, and tribal status, if known, of the child's parent(s);
- D.** The relationship, if any, of the petitioner(s) to the child;
- E.** The names and addresses, if known, of all persons whose consent is required and proof of such consent;

- F. A description of all previous court proceedings involving the care or custody of the child to be adopted and the results of these proceedings along with copies of all court orders;
- G. The reasons the child is available for adoption and why the petitioner(s) desire to adopt the child;
- H. A request to change the child's name if the petitioner(s) wish to make such a request; and
- I. A copy of any termination petition filed in conjunction with the adoption petition.

**Sec. 04.11.003 Availability for Adoption**

Any child may be adopted.

**Sec. 04.11.004 Persons Required to Consent to Adoption**

Unless consent is not required under CSC 04.10.005, a petition to adopt a child may be granted only if written consent to a particular adoption has been executed by:

- A. The mother of the child;
- B. The father of the child, if the father was married to the mother at the time the child was conceived or at any time after conception, the child is the father's child by adoption, or the father has otherwise legitimated the child under tribal law;
- C. Any person lawfully entitled to custody to the child or empowered to consent;
- D. The Court having jurisdiction to determine custody of the child, if the legal guardian or custodian of the child is not empowered to consent to the adoption;
- E. The child, if 10 years of age or older, unless the Court in the best interests of the child dispenses with the child's consent; and
- F. The spouse of the minor to be adopted.

**Sec. 04.11.005 Persons as to whom Consent and Notice not required**

- A. Consent to adoption is not required of
  - 1. A parent who has relinquished parental rights to a child;
  - 2. A deceased parent;
  - 3. A parent whose parental rights have been terminated by order of the Court under CSC 04.09.009;

**Sec. 04.11.006 Execution of Consent**

- A. The required consent to adoption shall be executed at any time after the birth of the child in presence of the Court. The consent is not valid unless

the consent form states that the person consenting to the adoption has the right to withdraw as provided in CSC 04.10.007.

**Sec. 04.11.007            Withdrawal of Consent**

- A. A consent to adoption may not be withdrawn after the entry of a decree of adoption.
- B. A consent to adoption may be withdrawn before the entry of a decree of adoption, within ten (10) days after consent is given, by delivering written notice to the person obtaining consent, or after the ten (10) day period, if the Court finds, after notice and opportunity to be heard is afforded to the petitioner, the person seeking withdrawal, and TFYS, that the withdrawal is in the best interest of the person to be adopted and the Court orders withdrawal.

**Sec. 04.11.008            Setting the Hearing**

When the Court receives the petition for adoption it shall set a hearing date, which shall not be more than forty (40) days after the Court receives the petition, unless continued for good cause shown. Service of the Notice of Hearing shall be as provided in CSC 04.01.009.

The Secretary of the CCTHITA shall be a necessary party to all adoption proceedings before the Child and Family Court.

**Sec. 04.11.009            Home Study Report**

For every adoption petition, the Family Caseworker shall provide the Court, or arrange for the Court to be provided, with a complete pre-adoption, Home Study Report including, but not limited to, the following:

- A. The physical and mental condition of the child, petitioner(s) and persons living in the petitioners' home;
- B. The circumstances of the voluntary or involuntary termination of parental rights to the child or of the parents' death;
- C. The home environment, family life, access to health services, and resources of the petitioner(s);
- D. The child's and petitioners' cultural heritage and tribal status;
- E. The marital status of the petitioner(s);
- F. The names and ages of the petitioners' children and of any other persons residing with the petitioner(s);
- G. Information from health, education, and social services personnel who have had prior professional contact with the child and petitioner(s);
- H. The results of a criminal background check of the petitioner(s);
- I. Any evidence of alcohol and drug abuse in petitioners' household;
- J. Any other facts and circumstances relating to whether or not the adoption should be granted.

The Family Caseworker shall file and serve the pre-adoption report, as provided in CSC 04.01.009.

**Sec. 04.11.010 Additional Reports**

Any party may file and serve a report setting forth recommendations regarding the adoption, as provided in CSC 04.01.009.

**Sec. 04.11.011 Adoption Hearing**

The hearing shall be private and closed. Only those persons the Court finds to have a legitimate interest in the proceedings may attend. The Court shall consider all adoption reports submitted for review. All parties shall be given the opportunity to testify.

**Sec. 04.11.012 Grounds for Entering Decree of Adoption**

The Court may enter a Decree of Adoption if it finds that:

- A. The child is available for adoption as provided in CSC 04.10.003;
- B. The adoption is in the best interest of the child and the CCTHITA; and
- C. The petitioner(s) can provide appropriate and adequate parental care for the child.

**Sec. 04.11.013 Placement Preferences**

The Court shall consider the following placement preferences in deciding whether to grant the petition for adoption, unless good cause exists to the contrary;

- A. In the home of a member of the child's immediate, extended or clan family.;
- B. In the home of a member of the child's tribe;
- C. In the home of a person from another tribe; or
- D. A member of the tribal community, which shall include persons living in or near a tribal community who participate in tribal activities and are considered part of the tribal community, based on evidence presented at the hearing;
- E. If the above criteria cannot be met, for good cause shown, placement may be made with any person who has knowledge of and a desire to foster the child's tribal affiliation and special needs.

**Sec. 04.11.014 Enrollment Prior to Entry of Adoption Decree**

If a child is eligible for membership in an Indian Tribe, the Family Caseworker shall assist in making application for membership or enrollment of the child. If an objection to enrollment or membership is filed, the Court shall set the matter for hearing, notify the parent(s), and make a determination based on the best interests of the child.

**Sec. 04.11.015 Cultural Continuity Agreement**

A Cultural Connection Agreement is a binding contract between an adoptive parent and the Tribe that ensures a child remains connected with his or her culture and traditions.

**Sec. 04.11.016 Denial of Adoption Petition**

If the adoption petition is denied, the Court shall specifically state the reasons for the denial and shall designate who shall have custody of the child.

**Sec. 04.11.017 Decree of Adoption**

If the Court grants the Petition for Adoption, the Court shall enter Findings of Fact and Conclusions of Law and a separate Decree of Adoption. The decree shall include:

- A. A finding that the child is available for adoption;
- B. Any order the Court may make concerning the recognition of the consents or orders terminating parental rights filed in the case;
- C. A signed and notarized copy of the Cultural Connection Agreement;
- D. An order that the child is, for all intents and purposes, the child, legal heir, and lawful issue of the petitioner(s);
- E. A finding as to the marital status of the petitioner(s);
- F. An order changing the name of the child and the full name of the child upon adoption, if such an order has been requested;
- G. Orders directing the Court Clerk to forward a certified copy of the decree and affidavit to the appropriate Bureau of Vital Statistics for the purpose of obtaining a corrected birth certificate when the adoption becomes permanent.
- H. An order that the records of the proceeding shall remain sealed unless otherwise ordered by the Court.

**Sec. 04.11.018 Effect of Decree of Adoption**

A Decree of Adoption has the following effect: it creates the relationship between the adopted child and the petitioner(s) and all relatives of the petitioner(s) that would have existed if the child were a legitimate, blood descendant of the petitioner(s). This relationship shall be created for all purposes including inheritance and applicability of statutes, documents, and instruments, whether executed before or after entry of the adoption decree, that do not expressly exclude an adopted person by their terms. The decree does not override any tribal enrollment laws or requirements nor does it affect the child's enrollment status as a member of any Tribe.

**Sec. 04.11.019 Visitation**

Adoptive parents shall be encouraged to help the child maintain positive relationships with the biological family. However, the adoptive parents shall have the exclusive right and power to decide the terms, if any, of visitation by any person with the child.

**Sec. 04.11.020 Adoption Records**

All records, reports, proceedings, and orders in adoption cases are confidential and shall not be available for release or inspection except:

- A.** The Bureau of Indian Affairs may have access to such information as is necessary to protect inheritance rights or the enrollment status of the adopted child (and his or her descendants);
- B.** A copy of the Decree of Adoption, but not the Findings of Fact and Conclusions of Law, may be given to a Bureau of Vital Statistics as provided in Section 4.07.011; and
- C.** An adopted child may petition the Court, upon reaching eighteen (18) years of age, for release of specifically requested information, limited to:
  - 1.** The biological parents' name, address, tribal status, and social security number;
  - 2.** The Cultural Connection Agreement; and
  - 3.** The names and relationship to the child of relatives, for the purpose of (a) medical need or medical history information, (b) to assist in making a relative placement of a child of the adoptive youth, or (c) for the purpose of enrolling the child or the child's descendants in an Indian Tribe or other Native Nation or organization.
- D.** Upon receipt of the petition submitted by the adopted child to gain information about his or her biological parents, the Child and Family Court shall review all information and order the release of such information as the Court may determine to be reasonably necessary to the lawful purposes set forth herein.

## Chapter 12. Emancipation

<b>Sec. 04.12.001</b>	<b>Purpose</b>
<b>Sec. 04.12.002</b>	<b>Who May Petition</b>
<b>Sec. 04.12.003</b>	<b>Contents</b>
<b>Sec. 04.12.004</b>	<b>Consent or Written Recommendation</b>
<b>Sec. 04.12.005</b>	<b>Standard to Be Applied</b>
<b>Sec. 04.12.006</b>	<b>Rights of Emancipated Child</b>

### **Sec. 04.12.001 Purpose**

Any Indian child who is a resident or is domiciled within CCTHITA territories or communities and is at least sixteen (16) years of age, who is living separate and apart from his or her parent(s), guardian(s) or custodian(s), capable of self-support and of managing his or her own financial affairs, may petition the Court to have the status of an emancipated person for limited or general purposes.

### **Sec. 04.12.002 Who May Petition**

A child may file this petition in his or her own name.

### **Sec. 04.12.003 Contents**

The petition for emancipation shall state:

- A. The name, birth date, and address of the child;
- B. The name and address of each living parent;
- C. The name and address of the child's guardian or custodian, if any;
- D. The reasons why emancipation would be in the best interest of the child;
- E. The purposes for which emancipation is sought.

### **Sec. 04.12.004 Consent or Written Recommendation**

The child must obtain either: (1) the consent of each living parent, guardian, or custodian having control of the person or property of the child, or (2) an affidavit from a Family Caseworker or other appropriate service provider recommending emancipation and setting out the factual basis for the recommendation.

### **Sec. 04.12.005 Standard to Be Applied**

After a hearing, if the Court finds that it is in the best interests of the child, the Court may remove the disabilities of minority as requested in the petition. Emancipation may be for general purposes or the limited purposes as specified in the order.

### **Sec. 04.12.006 Rights of Emancipated Child**

Except for specific constitutional and statutory age requirements, including but not limited to, voting and use of alcoholic beverages, a child whose disabilities are removed for general purposes has the power and capacity of an adult including, but not limited to:

- A.** The right to control property;
- B.** The right to be domiciled where the child desires;
- C.** The right to receive and control all earnings;
- D.** The right to sue and be sued; and
- E.** The capacity to contract.



## Chapter 13. Family Safety

Sec. 04.13.001	Findings and Purpose
Sec. 04.13.002	Rules of Construction
Sec. 04.13.003	Definitions
Sec. 04.13.004	Full Faith and Credit
Sec. 04.13.005	Authority of the Tribal Court
Sec. 04.13.006	General Provisions for Civil Protective Orders and Process
Sec. 04.13.007	Procedures for Ex Parte Protective Orders
Sec. 04.13.008	Procedures for Long-Term Protective Orders
Sec. 04.13.009	Terms of Protective Order
Sec. 04.13.010	Modifications or Dissolution of Protective Orders
Sec. 04.13.011	Violation of Civil Protective Orders
Sec. 04.13.012	Petitions for Custody Orders
Sec. 04.13.013	Appeal of Long-Term and Custody Orders Under This Section

### Sec. 04.13.001 Findings and Purpose

The purpose of this statute is to honor the values and traditions of our ancestors to promote family safety and justice to our children, grandchildren, and future generations of Tlingit and Haida people. The CCTHITA finds that family violence goes against our most important values that keep children and families safe: discipline, respect for others, patience, strength of spirit, holding each other up, and living in peace and harmony. The Tribe finds that family violence tears at the fabric of the entire tribal community by making families unhealthy, unsafe, fearful, and economically unstable. The successful future of our Tribe depends on families being able to lead safe and healthy lives, free from emotional, spiritual, psychological, and physical abuse.

This section outlines the procedures for the tribal court to issue civil protective orders to protect individuals and families from family violence, and enhance the overall health, safety and economic well-being of the tribal community. The larger purpose of this chapter is to begin to repair the historical trauma inflicted on our people and to heal our families.

### Sec. 04.13.002 Rules of Construction

- A. Provisions of this Statute shall be construed consistently with the CCTHITA Constitution, Title 04, Child and Family, and Title 06, Tribal Courts. Where provisions of this Statute conflict with other Tribal Statutes, the provisions of this Statute shall govern.
- B. The Court, in interpreting this chapter, may consider unwritten tribal law and precedent from other jurisdictions, including tribal, federal, and state law.
- C. This chapter should be liberally construed in favor of protecting individuals from violence and abuse.

**Sec. 04.13.003 Definitions**

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them:

- A.** “Communicate” means direct or indirect contact (personally or through a 3<sup>rd</sup> Person), including but not limited to in-person contact, telephonic contact, text messaging, or other written and electronic contact.
- B.** “Family violence” or “domestic violence” means when someone:
  - 1.** Physically harms or attempts to physically harm a person in a special relationship;
  - 2.** Makes threats of physical harm against a person in a special relationship, which places that person in fear of harm;
  - 3.** Controls or intimidates another person in a special relationship through an ongoing pattern of emotional, financial, or verbal abuse; or
  - 4.** Commits or attempts to commit one or more of the following crimes (as defined by Alaska law or federal law), against another person in a special relationship:
    - a.** Arson or criminally negligent burning;
    - b.** A crime against a person, including homicide, assault, reckless endangerment, kidnapping, custodial interference, sexual offenses, robbery, extortion and interference;
    - c.** Burglary;
    - d.** Criminal trespass;
    - e.** Criminal mischief;
    - f.** Destruction, Damage, or Vandalism of Property;
    - g.** Disorderly Conduct;
    - h.** Harassment;
    - i.** Stalking;
    - j.** Terroristic threatening;
    - k.** Violating a Family violence order; or protective order; or
    - l.** Weapons Law Violation;
- C.** “Ex parte protective order” means an order issued without necessarily giving the respondent advance notice of a request for a protective order and an opportunity to contest it. An ex parte order will be effective for twenty (20) days unless the court dissolves or modifies it sooner.
- D.** People in a “special relationship” are people who:
  - 1.** Are current or former spouses;

2. Live together or have lived together in the same household or housing facility;
  3. Are dating or have dated;
  4. Are engaged in or who have engaged in a sexual relationship;
  5. Are related by blood or adoption, by clan, or are considered to be extended family under Tlingit and Haida custom and traditions;
  6. Are related or formerly related by marriage;
  7. Have a child in common;
  8. Are minor children of people in a relationship that is described in paragraphs 1-7; or
  9. Are elders or vulnerable people and their caregivers.
- E.** “Long term protective order” means an order issued after the respondent is given notice of a request for a protective order and an opportunity to contest it at a court hearing. Unless otherwise stated, provisions in a long term order will last for a minimum of one (1) year.
- F.** “Modification Request” means a request by either the petitioner or the respondent to modify the terms of a protective order or dissolve a protective order.
- G.** “Program of intervention for perpetrators” means a specialized program offered to people who have committed family violence, which has been approved via tribal, state, or federal law, to address the causes of family violence;
- H.** “Petitioner” means the person for whom protection is sought.
- I.** “Respondent” means the person who is accused of committing family violence.
- J.** “Preponderance of the Evidence” means the evidence provided that the respondent committed a crime of family violence against the petitioner is of greater weight or more convincing than the evidence offered in opposition to it. Preponderance of the evidence is the burden of proof applied to Long Term Protective Orders.
- K.** “Probable Cause” means that facts or circumstances exist that would lead a reasonable person to believe that the respondent committed a crime involving family violence against the petitioner. Mere suspicion or belief, unsupported by facts or circumstances, is insufficient. Probable Cause is the burden of proof applied to Ex Parte Protective Orders.
- L.** “Vulnerable People” means people who cannot protect or care for themselves due to physical or mental disabilities or age.

**Sec. 04.13.004 Full Faith and Credit**

In accordance with the full faith and credit provision of the Violence Against Women Act, 18 U.S.C. § 2265 *et. seq.* the validity of protective orders issued by the Tribal Court shall not be affected if it is not registered with the statewide protection order registry. If directed by the Court, the court clerk may register the order with the State of Alaska Court System and forward a copy of the protective order to the statewide protection order registry. Any valid protective order issued by the federal government, State of Alaska, another state, or another Tribe shall be accorded full faith and credit by the Tribe.

**Sec. 04.13.005 Authority of the Tribal Court**

The jurisdiction of the Tribal Court shall extend to all matters of family violence upon proper petition for a protective order, where the family violence impacts an individual eligible for membership in the Tribe or has a direct effect on the Tribe’s inherent sovereign right to protect the health, safety, welfare, or economic security of its people, and thus the Tribe itself.

**Sec. 04.13.006 General Provisions for Civil Protective Orders and Process**

**A. Court Fees**

No filing fee shall be required for the filing of a petition for a protective order.

**B. Confidential Information Form**

Persons requesting a protective order shall fill out a Confidential Information Form which includes the petitioner’s address, telephone number, current residence, and current employment;

**THIS INFORMATION IS CONFIDENTIAL, AND SHALL BE KEPT PRIVATE FROM THE RESPONDENT AND THE GENERAL PUBLIC.**

**C. Required Information for Protective Order Petitions**

A petition for a protective order shall be signed under oath, under penalty of perjury, and shall include, to the best of the petitioner’s knowledge:

1. The name, tribal affiliation (if known), address, telephone number, current residence, current employment, and enrollment status (if known) of the respondent;
2. The facts that make it necessary for the petitioner to be protected. The fact statement should explain whether the person requesting the protective order is the person to be protected, or whether it is another person or persons. If the person to be protected is another person, what relationship that person has with the person requesting the protective order;
3. A written factual account of the family violence, with enough detail for the court to understand what happened and when it happened;
4. A statement of all current cases involving the petitioner or respondent going on in other courts;

5. The relief requested by the petitioner, including any child custody and property orders; and
6. A statement as to whether the petitioner wants a long-term protective order.

**D.** Availability and Assistance with Forms

The tribal court clerk will provide forms to any person seeking a protective order. The tribal court clerk may provide the petitioner with a list of advocates from Tribal Family and Youth Services, AWARE (Aiding Women and Rape Emergencies), another tribal agency, or the Tribal Court Bar Membership roster containing a list of persons who may provide assistance in completing and filing the forms

**E.** Notice and Opportunity to be Heard

Reasonable notice and opportunity to be heard shall be given to the respondent sufficient to protect that person's right to due process. This subsection does not prevent the court from issuing ex parte protection orders when necessary.

**F.** Explanation of Order to the Parties

The judge shall make reasonable efforts to ensure that the order is understood by the petitioner and the respondent, if present at the hearing.

**G.** Service of Process

1. The tribal court clerk may deliver protective orders to the Alaska State Court for filing and shall deliver the protective order to the Alaska State Troopers, municipal police, Village Public Safety Office, Village Police Officer, or other appropriate law enforcement for service.
2. Service of process under (1) of this subsection does not preclude the court from using any other available means to serve process issued under this chapter.
3. The tribal court shall pay for any service fees. Respondents subject to a long-term order under this chapter shall reimburse the tribal court for service fees. The court may in its discretion order reimbursement of services fees against any person whom the court finds, after a hearing, has knowingly submitted a petition containing false information and abused the court process.

**H.** Entry of Protective Orders to Statewide Protection Order Registry

If the petitioner requests that the protective order be placed on the statewide protection order registry, the tribal court clerk shall forward the order to the local Law Enforcement agency and/or the Alaska State Court System for registration.

- I.** Lapse of Time between Act of Family Violence and Filing of Petition  
The Court shall not deny a petition for a protective order because of a lapse of time between an act of family violence and the filing of the petition.
- J.** Dual Protective Orders  
The Court shall not issue protective orders against the petitioner and the respondent in the same action. However, the Court may hear separate petitions brought by either party.
- K.** Conduct of ex parte hearing
  - 1.** The Court shall arrange for a hearing in a manner that protects the safety of all parties and all court personnel.
  - 2.** The hearing shall be recorded and all testimony will be given under oath.
  - 3.** The petitioner will have the right to call witnesses and present evidence. However, a petition may be granted based solely on the testimony of the petitioner.
  - 4.** If the respondent is present, the respondent also has the right to call witnesses and present evidence.

**Sec. 04.13.007 Procedures for Ex Parte Protective Orders**

- A.** Upon receipt of a petition alleging family violence which requests an ex parte protective order, the tribal court clerk shall immediately notify a tribal judge.
- B.** The tribal court clerk will schedule a hearing to consider the request for an ex parte protective order at the earliest possible time.
- C.** The tribal court clerk will provide notice of the hearing to petitioner. The tribal court clerk may attempt to provide notice of the hearing to respondent; however an ex parte hearing may go forward without notice to the respondent given the emergency nature of the proceedings.
- D.** Ex Parte Protective Orders: Findings and Burden of Proof  
After a hearing, the tribal judge shall issue an ex parte protective order if the tribal judge finds that the petitioner has established that:
  - 1.** Jurisdiction exists in the tribal court;
  - 2.** There is probable cause that the respondent committed family violence against the petitioner; and
  - 3.** A protective order is necessary to ensure the petitioner's safety.
- E.** The tribal judge shall set the terms of an ex parte protective order. Such terms are limited to the relief listed in CSC 04.12.011 (a)-(e), (i)-(k), or (v) of this chapter.

- F.** The order shall identify whether or not respondent was notified of the ex parte petition. The order shall also include the date of the long-term hearing.
- G.** Ex Parte Protective Orders shall be effective for twenty (20) days from the date of issue by the court, unless the court dissolves or modifies the order sooner as defined in CSC 04.12.012.

**Sec. 04.13.008 Procedures for Long-Term Protective Orders**

- A.** Upon receipt of a petition alleging family violence which requests a long-term protective order the tribal court clerk shall notify a tribal judge as soon as practicable. The tribal judge shall consider the petition and set a hearing that affords the respondent at least ten (10) days notice from the date of service.
- B.** Long-Term Protective Orders: Findings and Burden of Proof  
The tribal judge shall issue a long-term protective order if the tribal judge finds that the petitioner has established by a preponderance of the evidence that:
  - 1.** Jurisdiction exists in the tribal court;
  - 2.** The respondent committed family violence against the petitioner;
  - 3.** The respondent received at least ten (10) days notice of the hearing and had an opportunity to be heard, regardless of whether the respondent appeared at the long-term hearing; and
  - 4.** The respondent represents a credible threat to the safety of the petitioner or a minor child in the care of the petitioner.
- C.** The tribal judge shall set the terms of a long-term protective order. Any of the terms listed in CSC 04.12.009 may be issued in a long-term protective order.
- D.** A Long-Term Protective Order shall be effective for up to one (1) year from the date of issue by the court, unless the court dissolves or modifies the order sooner as defined in CSC 04.12.010, or as provided in CSC 04.12.008(E).
- E.** Petition to renew. A petitioner who has been granted a long-term protective order may file a request to renew the protective order. The request may be made within two (2) months of the expiration of the long-term protective order. The tribal court clerk shall set a hearing no sooner than ten (10) days in advance. The tribal court shall arrange for the respondent to be served by process server or certified mail with the request for renewal and notice of hearing. At the court hearing, the tribal judge shall consider whether the grounds for a long-term protective order still exist, and warrant continuation of the protective order for an additional year. However, in cases where there is evidence that the respondent poses a significant threat of severe physical or mental injury to the petitioner, the

Court can renew a protective order for up to five (5) years.

**Sec. 04.13.009 Terms of Protective Order**

- A.** The tribal judge may, when appropriate, attach reasonable terms and provisions to any civil protective order restricting the respondent including, but not limited to:
- 1.** Prohibiting the respondent from threatening to commit or committing family violence, stalking, or harassment;
  - 2.** Prohibiting the respondent from communicating directly or indirectly with the petitioner or other family or household member;
  - 3.** Removing and excluding the respondent from the residence of the petitioner, regardless of ownership of the residence;
  - 4.** Directing the respondent to stay away from the residence, school, or place of employment of the petitioner, CCTHITA offices, or any specified place frequented by the petitioner or any family or household member;
  - 5.** Prohibiting the respondent from entering a motor vehicle, airplane, ferry, or other propelled vehicle in the possession of or occupied by the petitioner;
  - 6.** Prohibiting the respondent from possessing a firearm or other deadly weapon;
  - 7.** Directing the respondent to surrender any firearm owned or possessed by the respondent if the court finds that the respondent was in the actual possession of or used a firearm during the commission of the family violence and the respondent was given notice of the hearing regarding the protective order and given an opportunity to respond;
  - 8.** Requesting a law enforcement or peace officer to accompany the petitioner to the petitioner's residence to ensure that the petitioner
    - a.** Safely obtains possession of the petitioner's residence, vehicle, or personal items; and
    - b.** Is able to safely remove a vehicle or personal items from the petitioner's residence;
  - 9.** Awarding temporary custody of a minor child to the petitioner and arranging for visitation with a minor child if the safety of the child and the petitioner can be protected;
  - 10.** Giving the petitioner possession and use of a vehicle and other essential personal items, regardless of ownership of the items
- B.** Whenever the tribal judge issues a long-term family violence protective order, the tribal judge may also, when appropriate, issue a separate order



for family violence prevention services. This order shall not be a part of the family violence protection order filed with the state court system, and violation of this portion of the order will not result in criminal prosecution but may result in all civil sanctions available to the court through contempt of court proceedings.

An order for family violence prevention services may:

1. Refer the respondent to a batterer's re-education program;
  2. Refer the respondent to individual mental health counseling with a counselor who has been trained in the dynamics of family violence;
  3. Prohibit the respondent from consuming controlled substances;
  4. Require the respondent to pay support to the petitioner or a minor child that is in the care of the petitioner or another caregiver if there is an independent legal obligation of the respondent to support the petitioner or child;
  5. Require the respondent to reimburse the petitioner or other person for expenses associated with the family violence, including medical expenses, counseling, shelter, and repair or replacement of damaged property;
  6. Require the respondent to pay costs and fees incurred by the petitioner in bringing the action;
  7. Withhold a portion of or all of the respondent's benefits and services which are directly related to being a citizen of CCHITA;
  8. Order the respondent to complete community work service;
  9. Require the respondent to pay restitution to the petitioner and associated persons in the form of money, subsistence foods, or other appropriate reparations;
  10. Require the respondent's attendance at dance practices, art classes, or language classes; or
  11. Make a recommendation to the Enrollment Committee that the respondent's disenrollment may be appropriate; or
  12. Order other relief the court determines necessary to protect the safety of the petitioner or any other family or household member.
- C. If the tribal judge has determined family violence has not occurred, the tribal judge may refer the parties, if willing, to Tribal Family and Youth Services for family group conferencing.

**Sec. 04.13.010 Modifications or Dissolution of Protective Orders**

- A. Upon the request for a modification or the dissolution of:

1. An ex parte protective order, the Court shall schedule a hearing on three (3) days notice, or shorter if deemed necessary; or
  2. A long-term protective order, the court shall schedule a hearing on twenty (20) days notice;
  3. The court need not schedule a hearing if the court finds that a request to modify or dissolve is meritless on its face; in that instance, the court may deny the request through a written order.
- B.** If a request for a modification is made under this section and the respondent raises an issue not raised by the petitioner, the court may allow the petitioner additional time to respond.
- C.** If the court modifies or dissolves a protective order under this section, it shall issue a modified or dissolved order and shall
1. Ensure that the order is understood by the petitioner and the respondent, if present at the hearing; and
  2. Ensure that the order is served on all parties and registered with the state court clerk.

**Sec. 04.13.011 Violation of Civil Protective Orders**

- A.** The tribal court clerk will immediately refer a civil protection order that has been violated in any manner to appropriate law enforcement personnel.
- B.** If a respondent in a protective order issued under this Statute is prohibited from communicating with the petitioner, excluded from the residence of the petitioner, or ordered to stay away from the petitioner, an invitation by the petitioner to communicate, enter the vehicle or residence, or have other prohibited contact with the petitioner does not waive or nullify any provision in a protective order.

**Sec. 04.13.012 Petitions for Custody Orders**

- A.** Procedure for a Custody Order
- Upon receipt of a petition alleging family violence which requests a custody order because children are affected by the family violence, the tribal court clerk shall set a custody hearing that affords the respondent at least thirty (30) days notice.
- B.** Custody Orders: Findings and Burden of Proof
- The tribal judge shall issue a custody order according to CSC 04.11, unless a custody order has been previously issued by another jurisdiction.
- C.** A Custody Order will be effective unless the court dissolves or modifies the order sooner as defined in CSC 04.11.
- D.** If there is a custody order from another jurisdiction, the tribal court will not modify that order. However, the tribal court may issue a protective order on behalf of minor children that may affect custody orders from

other jurisdictions.

**Sec. 04.13.013 Appeal of Long-Term and Custody Orders Under This Section**

Appeals of any ex parte or long term protective order or custody order under this section shall be conducted in conformity with CSC 06.01.130(K) regarding appeals to the Tribal Supreme Court.

**Amended:** April 19, 2008  
April 14, 2009  
April 20, 2013  
April 21, 2017

**ADOPTED** this 21<sup>st</sup> day of April 2017, by the Tribal Assembly of the Central Council of Tlingit and Haida Indian Tribes of Alaska, by a vote of 94 yeas, 0 nays, 2 abstentions and 0 absences.

**CERTIFY**

  
\_\_\_\_\_  
President Richard Peterson

**ATTEST**

  
\_\_\_\_\_  
Tribal Secretary Ralph Wolfe