

**Dry Creek Rancheria
Band of Pomo Indians**

Judicial Code

(3/26/07 draft)

TITLE 3. CHILDREN'S CODE

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SECTION 1. Short Title

This Code shall be entitled "**The Dry Creek Rancheria Children's Code**"

SECTION 2. Purpose

The Children's Code shall be liberally interpreted and construed to fulfill the following expressed purposes:

(A) To provide for the welfare, care, and protection of the children and families within the jurisdiction of the Dry Creek Rancheria;

(B) To preserve the unity of the family, preferably by separating the child from his or her parents only when necessary;

(C) To take such actions that will best serve the spiritual, emotional, mental, and physical welfare of the child and the best interest of the Tribe to prevent the abuse, neglect, and abandonment of children;

(D) To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention, and community based alternatives;

(E) To secure the rights of and ensure fairness to the children, parents, guardians, custodians, and other parties who come before the Children's court under the provisions of this Code;

(F) To provide procedures for intervention in state court proceedings regarding Indian children and for transfer of jurisdiction over Indian children from state and other tribal courts to this Children's Court;

(G) To recognize and acknowledge the tribal customs and traditions of the Dry Creek Rancheria regarding child-rearing;

(H) To preserve and strengthen the child's cultural and ethnic identity whenever possible.

SECTION 3. Authority

This Children's Code, is adopted pursuant to the authority granted to the Tribal Council of the Dry Creek Rancheria pursuant to its reserved powers under Article 4 of the Articles of Association.

SECTION 4. Establishment of the Children's Court

(A) Creation of Children's Court. There is hereby established for the Dry Creek Rancheria, a court to be known as the Children's Court, which shall be vested in the Dry Creek Rancheria Tribal Court. The jurisdiction of the Children's Court shall be civil in nature and shall include the right to issue all orders necessary to insure the

safety, well-being and best interests of children who have been declared to be wards of the Children's Court. The Children's Court shall also have the power to enforce subpoenas and orders of restriction, fines, contempt, confinement, and other orders as appropriate.

SECTION 5. Jurisdiction of the Children's Court

(A) General Jurisdiction. The Children's Court shall have jurisdiction over the following persons:

- (1) An enrolled member of the Tribe under the age of eighteen (18) years residing in the Dry Creek Rancheria's primary service area;
- (2) All children transferred to the Children's Court pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1901-1963.
- (3) A child of enrolled member(s) of the Tribe or other Indians, as defined in Section 2 of this Code, residing within the exterior boundaries of the Dry Creek Rancheria.
- (4) A non-Indian child residing within the exterior boundaries of the Dry Creek Rancheria in the home of an enrolled member of either the Dry Creek Rancheria or any other Indian Tribe;
- (5) Any person causing a child to come within the jurisdiction of this Code.
- (6) An Indian who is residing within the exterior boundaries of the Dry Creek Rancheria who is pregnant and abusing alcohol or controlled substances.
- (7) A non-Indian who is residing within the exterior boundaries of the Dry Creek Rancheria who is pregnant and abusing alcohol or controlled substances.
- (8) Extended family residing in the household.

SECTION 6. Transfer of Jurisdiction

(A) Application of the Indian Child Welfare Act. The Children's Court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, where they do not conflict with the provisions of this Code. The procedures for state courts in the Indian Child Welfare Act shall not be binding upon the children's Court except where specifically provided for in this Code.

(B) Transfer to State Court or Other Tribal Court. In any proceeding before the Children's Court, the Court may transfer the proceedings to an appropriate state court

or another tribal court where the state or the other Indian Tribe has a significant interest in the child and the transfer would be in the best interest of the child.

(C) Transfer from Other Courts. The Children's Court may accept or decline, under the procedures set forth in this Code, transfers of child welfare cases from other federal, state, or tribal courts.

SECTION 7. Procedures for Transfer from State Court

(A) Receipt of Notice. The presenting officer shall be the agent for service of notice of the state court child custody proceedings, as required by the Indian Child Welfare Act.

(B) Intervention. The presenting officer shall file a motion to intervene with the state court within five (5) days of receipt of notice upon certification by the Dry Creek Rancheria Enrollment office that the child is an "Indian Child" pursuant to the Indian Child Welfare Act. Failure to file such motion within the five day time period shall not preclude the Tribe from intervening at a later date.

(C) Investigation and Pre-Transfer Report. The Indian Child Welfare worker shall conduct an investigation and file a written report with the presenting officer and the Indian Child Welfare Committee.

(D) Decision to Transfer. The Indian Child Welfare Committee shall make written recommendations to the presenting officer on whether or not the Tribe should petition for transfer from the state court. The Indian Child Welfare Committee shall consider these factors:

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

(E) Request for Hearing. If the Indian Child Welfare Committee recommends transfer of the case to the Children's Court from the state court, the presenting officer shall request a hearing on the recommendation with the Children's Court.

(F) Children's Court Hearing on Transfer Recommendation. The Children's Court shall conduct a hearing to determine if the Court should accept transfer prior to the filing of a petition for transfer with the state court. The Children's Court shall consider the following factors:

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

(G) Discretion. The Children's Court has discretion to accept or deny transfers from state courts whether requested by the Indian Child Welfare Committee or a parent or Indian custodian. The hearing on whether or not to accept transfer shall be conducted prior to dismissal of the matter in state court.

(H) Petition for Transfer. The tribal petition for transfer shall be filed in the state court by the presenting officer within five (5) days of receipt of the Court's decision.

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

SECTION 8. Full Faith and Credit; Conflict of Laws

(A) State Court Orders. State child custody orders involving children over whom the Children's Court could take jurisdiction may be recognized by the Children's Court only after a full independent review of such state proceedings has determined:

- (1) The state court had jurisdiction over the child; and
- (2) The provisions of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, were properly followed; and
- (3) Due process was provided to all interested persons participating in the state proceeding; and
- (4) The state court proceeding does not violate the public policies, customs, or common law of the Tribe.

(B) Court Orders of Other Tribal Courts: Orders of other tribal courts involving children over whom the Children's Court could take jurisdiction shall be recognized by the Children's Court after the Court has determined:

- (1) That the other tribal court exercised proper subject matter and personal jurisdiction over the parties; and
- (2) Due process was provided to all interested persons participating in the other tribal court proceeding.

(C) Tribal Interest: Because of the vital interest of the Tribe in its children and those children who may become members of the Tribe, the statutes, regulations, public policies, customs and common law of the Tribe shall control in any proceeding involving a child who is a member of the Tribe or eligible for membership in the Tribe.

SECTION 9. Procedures and Authorizations

(A) Rules of Procedure. The procedures in the Children's Court shall be governed by the rules of procedure for the Tribal Court, which are not in conflict with this Code.

(B) Cooperation and Grants. The Children's Court is authorized to cooperate fully with any federal, state, tribal, public or private agency in order to participate in any foster care, shelter care, child abuse prevention, treatment or training program(s) and to receive grants-in-aid to carry out the purposes of this Code. This authority is subject to the availability of funds.

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

(D) Contracts. The Children's Court may negotiate contracts with tribal, federal or state agencies and/or departments on behalf of the Board of Directors for the care and placement of children before the Children's Court subject to the availability of funds.

SECTION 10. Children's Court Personnel

(A) Children's Court Judge

(1) Appointment. The Children's Court Judge (s) shall be appointed in the same manner as set forth in Chapter 2 of the Dry Creek Rancheria Judicial Code for all Tribal Court Judges.

(2) Qualifications. The general qualifications for Children's Court Judges shall be the same as established in Section 7 of the Dry Creek Rancheria Judicial Code for all Tribal Court Judges.

(3) Powers and Duties. In carrying out the duties and powers specifically enumerated under this Code, judges of the Children's Court shall have the same duties and powers as judges of the Tribal Court, including, but not limited to, the contempt power, the power to issue arrest or custody warrants, and the power to issue search warrants.

(4) Disqualification or Disability. The rules of disqualification or disability of a Children's Court Judge shall be the same as those rules that govern Tribal Court Judges.

(B) Guardians Ad Litem

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

(2) Role of the Guardian Ad Litem. The duty of the guardian ad litem is to represent the interests of the child. A child fourteen (14) years of age or older is presumed capable of determining what is in his or her best interests. It is the duty of the guardian ad litem to represent the child's wishes in such cases. For children less than fourteen (14) years of age, the guardian ad litem shall make a determination as to the best interests of the child regardless of whether that determination reflects the wishes of the child. However, the wishes of the child are always relevant to the determination of best interests and shall be weighed according to the competence and maturity of the child.

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

(a) Appear at all hearings to competently represent the interests of the child in proceedings before the Court;

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

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

(d) Provide a written report of findings and recommendations to the Court at each hearing held before the Court;

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

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

(g) Inform the Court if the services are not being made available to the child and/or family, if the family fails to take advantage of such services, or if such services are not achieving their purposes;
h. Identify the common interests among the parties and, to the extent possible, act as mediator to promote a cooperative resolution of the matter;

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

(j) Advocate for the interests of the child in mental health, educational, juvenile justice, and other community systems when related to the circumstances causing the child to come within the jurisdiction of the Children's Court; and

(k) Attend training programs as recommended and provided by the Court or the Indian Child Welfare Committee.

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

SECTION 11. Indian Child Welfare Committee

(A) Creation of the Indian Child Welfare Committee. The Indian Child Welfare Committee ("ICWC") is hereby created for the purpose of protecting the best interests of the child and promoting the stability and security of the Tribe and its Indian families by fully exercising the Tribe's rights and responsibilities under the Indian Child Welfare Act of 1978 and this Code.

(B) Membership. The Indian Child Welfare Committee shall consist of not less than four (4) and not more than ten (10) adult members of the Tribe appointed by the Tribal Chairperson. At least one member of the Committee shall be a Board of Directors member, and that Council member shall serve as chairperson of the committee.

(C) Duties. The ICWC shall act under the authority expressly delegated to in this Code or in other enactment by the Board of Directors. The ICWC shall have the following duties:

(1) Advise the Board of Directors and the Children's Court on child welfare matters and recommend policies and procedures for implementing federal and tribal child welfare law;

(2) Monitor child welfare proceedings involving tribal members in the state or other tribal courts;

(3) Be advised of pending state court proceedings as provided in the Indian Child Welfare Act and make recommendations regarding intervention in such proceedings and transfer of jurisdiction from state court to the Children's Court;

(4) Conduct informal conferences with a child and the child's parent(s), guardian, or custodian, as provided in this Code, to discuss alternatives to formal court jurisdiction for resolving concerns about the proper care and supervision of a child;

(5) Make recommendations to authorize the filing of child-in-need-of-care petitions in the Children's Court pursuant to this Code;

(6) Make case management recommendations to the ICW Program workers, placement agency workers, and the presenting officer regarding the care, custody and supervision of tribal children under Court jurisdiction, including recommendations as to case plan, guardianship, and termination of parental rights;

(7) License and monitor group, shelter, foster and adoptive homes and child placement agencies; and

(8) Engage in further activities as to protect and improve the welfare of the children of the Tribe.

(D) Voting.

(1) Majority Vote. Actions of the ICWC shall be decided by a majority vote of those present at the meeting. The Chair shall only vote to break a tie vote of the committee.

(2) Quorum. A quorum shall consist of four (4) members including the Chair. Any action by less than a quorum must be ratified by non-attending members before such actions shall become official. Ratification may be by telephone, fax or personal contact and all ratifications shall be reduced to writing and placed in the minutes and approved at the next regularly scheduled committee meeting.

(E) Committee Members Are Not Investigators. Individual Committee members shall not initiate the gathering of information regarding the matter under review. All members shall have access to the same information. If ICWC members are contacted outside of a review by an interested party, he or she shall refer the party to the caseworker, social worker, client advocate, or the Dry Creek Rancheria Indian Child Welfare office, as appropriate. The Committee may, however, request that further information be provided or that further investigation be conducted by the social worker or other appropriate authority.

(F) Conflicts of Interest.

(1) Foster Parents. Committee members who are foster parents or child advocates may participate as committee members in the review of children who are in their own care, or whom they represent as advocates, but may not participate in voting or deliberations prior to voting.

(2) Extended Family Members. A Committee member may participate in the discussion but need not vote on actions involving the Committee member's extended family.

(G) Confidentiality.

(1) Meetings Closed. Meetings of the ICWC shall not be open to the public, except for persons authorized to attend by the Committee.

(2) Confidentiality Maintained. Confidentiality of case information and other ICWC records shall be maintained. Committee members are subject to the same standards of confidentiality as court personnel, social service workers and other professionals.

(3) Secured Area. Case materials and all other committee records shall be kept in a secure area. The Indian Child Welfare Program ("Program") worker shall collect case plan packets at the conclusion of Committee meetings so that no reports leave the meeting and all written reports are maintained in confidence. Written material may be provided to committee members in advance of meetings.

(H) Indian Child Welfare Committee Coordinator. The program director of the Program shall coordinate the activities of the ICWC.

SECTION 12. Child Protection Services

(A) Powers and Duties.

(1) Employment. The Program shall employ or contract for a protective services worker.

(2) Cooperation with Other Agencies. The Program shall cooperate with such state and community services as are necessary to achieve the purposes of this Code. The Program may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification by the Board of Directors.

(3) Protocol. A Protective Services Worker shall:

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

(b) Upon receipt of any report or information under § 110(A)(3)(a), shall initiate a prompt and thorough investigation within twenty-four (24) hours which shall include a determination of the nature, extent, and cause of any condition which is contrary to the child's best interests and the name, age, and condition of other children in the home;

(c) In conducting its investigation, the protective service worker shall seek the assistance of and cooperate with law enforcement officials within twenty-four (24) hours after becoming aware that one or more of the following conditions exist:

(i) Abuse or neglect is the suspected cause of a child's death;

(ii) The child is the victim of suspected sexual abuse or sexual exploitation;

(iii) Abuse or neglect resulting in severe physical, mental or emotional injuries to the child which requires medical treatment or hospitalization. For purposes of this subsection, "severe physical injury" means brain damage, skull or bone fracture, subdural hematoma, dislocation, sprains, internal injuries, poisoning, burns, scalds, severe cuts, or any other visible physical injury that seriously impairs the health or physical well-being of a child;

(iv) Law enforcement intervention is necessary for the protection of the child, the protective service worker, or another person involved in the investigation; or

(v) Any alleged perpetrator of the child's injury is not a person responsible for the child's health or welfare.

(4) Take a child into temporary custody if necessary, pursuant to § 113. Law enforcement officials shall cooperate with social services personnel to remove a child from the custody of his/her parents, guardian, or custodian when necessary;

(5) After investigation, assess the risk to the remaining children in the home, and all other facts or matters found to be pertinent;

(6) Substantiate whether there is probable cause to believe that the child is a child-in-need-of-care;

(7) Offer to the family of any child found to be a child-in-need-of-care appropriate services;

(8) Within thirty (30) days after a referral of a potential child-in-need-of-care, submit a written report of his/her investigation and evaluation which shall be included in the files maintained by ICWC and shall include a determination as to whether the report was substantiated or unsubstantiated; and

(9) Upon completion of the investigation by the local law enforcement agency or the protective services worker, the law enforcement agency or protective services worker may inform the person who made the report as to the disposition of the report.

(B) Cooperation of Law Enforcement Officials. Law enforcement officials shall cooperate with the protective services worker and the Program in conducting investigations pursuant to this Section.

(C) Substance Abuse by Pregnant Woman. If a protective services worker submits a report which alleges a pregnant woman's abuse of alcohol or a controlled substance, protective services shall arrange an appropriate assessment and offer services indicated under the circumstances. Services offered may include, but are not limited to, a referral for chemical dependency assessment, a referral for chemical dependency treatment, if recommended, and a referral for parental care. Protective services also may seek court ordered services under §§ 112 and 115. Protective services shall seek court ordered treatment under said §§ 112 and 115 if the pregnant woman refuses recommended voluntary services or fails recommended treatment.

SECTION 13. Investigation and Emergency Removal

(A) Investigative Order: Orders for Examination. The Court may order investigation and discovery, including but not limited to, taking of photographs, gathering physical evidence, and examinations or evaluations of a child, parent, guardian or custodian, conducted by a physician, dentist, psychologist, or psychiatrist, upon a showing of

probable cause to believe that a child is a child-in-need-of-care, which may be done ex-parte.

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

- (1) An authorization to enter a specified premises to remove the child, gather evidence and
- (2) To place the child in protective custody pending preliminary hearing.

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

- (1) Failure to remove the child may result in a substantial risk of death, serious injury, or serious emotional harm, or
- (2) The parent, guardian, or custodian is absent and it appears, from the circumstances, that the child is unable to provide for his/her own basic necessities of life, and no satisfactory arrangements have been made by the parent, guardian, or custodian to provide for such necessities and no alternative arrangements, except removal, are available to protect the child.

(D) Grounds for Removal Corrected. If grounds for removal are corrected, the child may be returned to the parent, guardian, or custodian by the person originally authorizing removal or by the protective services worker.

SECTION 14. Notice of Removal

(A) Notice to the Children's Court. After a child is removed from his/her home, the person who removed the child shall attempt to contact the presenting officer within six (6) hours. The attempt to contact the presenting officer shall be documented. Actual notice to the Court shall be made, by the removing person, no later than 12 o'clock noon the next Court working day.

(B) Notice to the Parent, Guardian or Custodian. The person removing the child shall make all reasonable efforts to notify the parents, guardian or custodian, within twelve (12) hours of the child's removal. Reasonable efforts shall include personal, telephone and written contacts at their residents, place of employment, or other location where the parent, guardian or custodian is known to frequent. If the parent, guardian or

custodian cannot be found, notice shall be given to members of the extended family of the parent, guardian or custodian and/or the extended family of the child.

(C) Notice to Child's Tribe if Different than Dry Creek Rancheria. If the Children's Court asserts jurisdiction over a person who is a member of an Indian Tribe or historic band other than the Dry Creek Rancheria, the Children's Court shall notify the Tribal Court of the non-Tribal member that jurisdiction has been asserted.

SECTION 15. Placement of Children

(A) Restrictions. A child alleged to be a child-in-need-of-care shall not be placed in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile offenders.

(B) Placement Priorities. A child may be placed in the following community based shelter-care facilities listed in order of preference:

- (1) Members of the child's extended family;
- (2) An Indian family of the Dry Creek Rancheria which is licensed as a foster home or an Indian family otherwise authorized by law to provide care for the child;
- (3) A facility operated by a licensed Indian child welfare services agency; or
- (4) Any other suitable placement which meets the standards for shelter care facilities established by the Indian Child Welfare Committee.

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

(D) Least Restrictive Setting. If the child cannot be returned to his/her parents, guardian or custodian, the child shall be placed in the least restrictive setting which most approximates a family and in which his/her special needs, if any, may be met. The child shall also be placed in reasonable proximity to his/her home, taking into account any special needs of the child.

SECTION 16. Indian Child Welfare Committee; Informal conference

(A) Informal Conference. The Indian Child Welfare Committee or its designee may hold an informal conference with the child and the child's parent(s), guardian, or custodian, before or after the filing of a petition, to discuss alternatives to the filing of a petition if:

(1) An informal adjustment of the matter would be in the best interest of the child and the Tribe; and

(2) The child and the child's parent(s), guardian, or custodian consent to an informal adjustment conference after they have received an explanation of their rights.

(B) No Authorization to Compel Involuntary Action. This section does not authorize the Indian Child Welfare Committee or its designee to compel any involuntary action of the parties involved.

(C) Options. At the informal adjustment conference, the Indian Child Welfare Committee or its designee, with the voluntary agreement of the parties, may:

(1) Refer the child and the child's parent(s), guardian, or custodian to a community agency for assistance; or

(2) Define terms of supervision calculated to assist and benefit the child, which regulate the child's activities and are within the ability of the child to perform.

(D) Report. The Indian Child Welfare Committee or its designee shall set forth in writing, conference findings and the disposition agreed to by the parties. The report shall be made available to and signed by the child, if appropriate, the child's parent, guardian, or custodian, the child's advocate, parents' attorney, the presenting officer and the Court, if a petition has been filed.

(E) Petition. If an informal adjustment is agreed to the Indian Child Welfare Committee may decline to authorize the filing of a petition, hold its petition in abeyance, or withdraw a petition and re-file at a later date without prejudice.

(F) Duration. Any disposition arranged through the informal adjustment procedure shall be concluded within six (6) months.

(G) Monitoring the Agreement. The Indian Child Welfare Committee or its designee shall review the child's progress every thirty (30) days. If, at any time after the initial thirty (30) day period, the Committee concludes that positive results are not being achieved, the Committee shall direct the protective services worker to request the filing of a petition by the presenting officer.

(H) Privileged Information. No statement during the informal adjustment hearing may be admitted into evidence at an adjudication hearing or any other proceeding involving the child.

SECTION 17. Filing of Child Protection Petition

(A) Authorization to File Petition

(1) Who May File. Any person may file a complaint with the ICWC, the Program, the presenting officer or law enforcement or the Children's Court alleging that child is a child-in-need-of-care.

(2) Formal Proceedings. The child protective services worker or the director of the Program may initiate formal child protection proceedings by filing a child protection petition in the Children's Court on behalf of the Tribe and in the best interests of the child.

(3) Emergency Action Not Precluded. Nothing in this Section shall preclude law enforcement or protective services personnel from taking emergency action under § 113 of this Code.

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

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

(1) The name, birth date, sex, address, and tribal affiliation of the child;

(2) The basis for the Court's jurisdiction;

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

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

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

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

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

SECTION 18. Service of Summons, Notices of Hearings, Subpoenas, and Notices to Putative Fathers.

(A) General. A party shall be given notice of a proceeding in the Children's Court in any manner authorized by this Children's Code or rules of Tribal Court unless a party must by summons as provided in Section (B) below.

(B) Service. The summons shall be issued and served on the parent, guardian or custodian, and the person with whom the child resides, if other than a parent or a court-ordered custodian, directing such person to appear with the child for trial or other proceeding. The Court may direct that the child's appearance in Court is unnecessary.

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

- (1) Identify the nature of proceeding;
- (2) Include a prominent notice that the proceedings could result in termination of parental rights; and
- (3) Have a copy of the petition attached to the summons.

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

- (1) Personal Service. A summons required under this Section must be served by delivering the summons to the party personally.
- (2) Service by Mail. If personal service of the summons is impractical or cannot be achieved, the Court may direct that it be served by registered or certified mail addressed to the last known address of the party, return receipt requested, and restricted to the addressee.
- (3) Substituted Service. The Court may direct any manner of substituted service, including publication if the Court finds that service cannot be made because the whereabouts of the person to be summoned has not been determined after reasonable effort.

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

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

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

(3) Publication. The published notice, which does not require publication of the petition itself, shall appear in a newspaper in the county where the party resides, if known, and if not, in the county of the party's last known address, if known, and if not, the county where the action is pending. The published notice must appear one or more times fourteen (14) days before the hearing.

(F) Notice of Hearing.

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

- (a) The parent or parents;
- (b) The attorney for the parents;
- (c) The child or advocate for the child;
- (d) The legal guardian or custodian other than the parent, if any;
- (e) The petitioner;
- (f) The child placing agency;
- (g) The guardian *ad litem*; and
- (h) Any other party the Court may direct to be notified.

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

(3) Preliminary Hearing. When a child is placed out of the home, reasonable efforts shall be made to notify the parents of the child or extended family pursuant to Section 18(B) as soon as the hearing is scheduled, and the notice may be in person, in writing, on the record, or by telephone.

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

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

(G) Subpoenas. The attorney for a party or the Court on its own motion, may cause a subpoena to be served on a person whose testimony or appearance is desired. It is not necessary to tender advance fees to the person serving a subpoena in order to compel attendance.

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

(I) Subsequent Notices. After a party's first appearance before the Court, subsequent notice of proceedings and pleadings shall be served on that party or, if the party has an attorney, on the attorney, either personally or by ordinary mail. A summons must be served before trial or termination hearing as provided by this Code unless a prior court appearance of the party in the case was in response to service by summons.

(J) Putative Fathers. If the Court determines that the child has no father as defined in Chapter 2, the Court shall take appropriate action as follows:

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

- (a) That a petition has been filed with the Court;
- (b) The time and place of hearing at which the natural father is to appear to express his interest, if any, in the child; and
- (c) A statement that failure to attend the hearing will constitute a denial of interest in the child, a waiver of notice for all subsequent hearings, a waiver of a right to appointment of an attorney, and could result in termination of any parental rights.

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

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

(b) Clear and convincing evidence establishes that the putative father is the natural father of the child; or

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

(d) After diligent inquiry, the identity of the natural father cannot be determined. If so, the Court shall publish notice at least once in a manner calculated to alert a person who may be the father of the child. If no person comes forward the Court shall terminate the parental rights of the unknown father and proceed without further notice or Court appointed attorney for the unidentified person.

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

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

SECTION 19. Preliminary Hearing

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

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

- (1) Whether probable cause exists to believe that the child is a child-in-need-of-care; and
- (2) Whether the home conditions continue to present a substantial risk of harm to the child's life, physical health, emotional or mental well-being; and
- (3) Whether any alternative, except removal of the child, is reasonably available to adequately safeguard the child from such risk.

(C) Parent, Guardian or Custodian Not Present. If the child's parent, guardian, or custodian is not present at the preliminary hearing, the Court shall make an inquiry

into what efforts have been made to notify and to obtain the presence of the parent, guardian, or custodian. If it appears that further efforts are likely to produce the child's parent, guardian, or custodian, the Court shall recess for not more than twenty-four (24) hours and direct the petitioner to make continued efforts to obtain the presence of the child's parent, guardian, or custodian. The preliminary hearing may be conducted in the parent's absence.

(D) Preliminary Hearing Procedure. The Court shall:

- (1) Read the allegations in the petition in open court, unless the reading of the allegation is waived by the parent, guardian or custodian;
 - (2) Advise the parent, guardian or custodian of the right to have counsel represent them, at their own expense;
 - (3) Advise the parent, guardian, or custodian of their right to a trial on the allegations in the petition;
 - (4) Advise the parent, guardian, or custodian of the right to remain silent, and
 - (5) Advise the parent, guardian, or custodian of their right to plead responsible, not responsible, no contest or stand mute as to the allegations in the petition.
- (6) Appoint a guardian *ad litem* for the child(ren).

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

- (1) The circumstances that gave rise to the petition; and
- (2) The need for placement or continued placement.

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

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

- (1) May accept a plea of responsible or no contest to the allegations in the petition from the parent, guardian, or custodian, in which case the Court would schedule a Deposition Hearing; or

(2) Shall order the parent, guardian, or custodian to appear at an adjudication hearing on a date and time set by the Court; if the parent, guardian, or custodian remains silent or pleads not responsible to the allegations in the petition, and

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

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

(a) Custody of the child with a parent, guardian, or custodian presents a substantial risk of harm to the child's life, physical health, emotional or mental well-being, and no provision of services or other arrangement except removal of the child, is reasonably available to adequately safeguard the child from such risk; and

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

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

SECTION 20. Adjudication Hearing

(A) Purpose. The Court shall conduct an adjudication hearing for the purpose of determining whether the child is a child-in-need-of-care.

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

(C) Continuances. Continuances of an adjudication hearing may be granted by the Court but only:

- (1) Upon stipulation of the parties;
- (2) Where process cannot be completed;

(3) Where the Court finds that the testimony of a presently unavailable witness is needed;

(4) Where a parent, guardian, or custodian requests an opportunity to obtain legal counsel (one time only for up to fourteen (14) days); or

(5) For good cause shown.

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

(E) Evidence.

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

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

(3) Speaker telephones. The Court may rely upon conference telephone or other electronic devices that permit all those appearing or participating to hear and speak to each other.

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

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

SECTION 21. Disposition Hearing

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

(1) A child properly within its jurisdiction, and when applicable;

(2) Against any adult, once the Court has determined following trial (adjudication), plea of admission, or no contest, that the child comes within its jurisdiction.

(B) Disposition Immediately Following Adjudication. A disposition hearing may be had immediately after the adjudication. The interval, if any, between the adjudication and the disposition, is within the discretion of the Court.

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

(2) Notice. If the disposition is not held immediately after the adjudication, notice of hearing may be given by scheduling it on the record in the presence of the parties or in accordance with § 118, Notice and Service of Summons.

(C) Proposed Case Service Plan. The Program or its agents shall prepare a written report describing all reasonable and appropriate alternative dispositions, including reports of the protective service worker. The report shall contain a specific plan for the care of and assistance to, the child, the child's parent, guardian, or custodian designed to resolve the problems presented in the petition.

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

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

(3) Due Date. The ICW Program or its agents shall present the case plan to the Court, the child advocate, and the presenting officer, at least three (3) days before the disposition hearing.

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

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

(1) Cross-Examination. The parties shall be given an opportunity to examine and controvert written reports so received and may be allowed to cross-

examine individuals making reports when such individuals are reasonably available.

(2) Speaker Phones. The Court may rely upon conference telephone or other electronic devices that permit all those appearing or participating to hear and speak to each other.

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

(E) Disposition Orders.

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

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

- (a) Permit the child to remain with his/her parent(s), guardian, or custodian, subject to such conditions as the Court may prescribe;
- (b) Place the child with a relative within the primary service area of the Dry Creek Rancheria, subject to such conditions as the Court may prescribe;
- (c) Place the child in a licensed foster home within the primary service area of the Dry Creek Rancheria, subject to such conditions as the Court may prescribe;
- (d) Place the child in a group home or residential care facility designated by the Court; or
- (e) Order the presenting officer to file a petition to terminate parental rights under this Code.

(F) Reimbursement for Care. Parents, custodians, or guardians may be ordered by the Court to reimburse the Tribe and/or the California Family Independence Agency for

the cost of care and placement. Reimbursement will be based on the State of California Child Support Guidelines.

(G) Child Support. Parents, custodians or guardians may be ordered by the Court to make child support payments for children placed with relatives or friends who are not eligible for foster care payments or payments are not sufficient to cover the cost of caring for the children.

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

SECTION 22. Disposition Review Hearing

(A) Review. The disposition order is to be reviewed at the discretion of the Court but at least once every six (6) months.

(B) Notice of Review. Notice of the review hearing shall be provided on the record or by ordinary mail as provided in § 118(F).

(C) Scope of Review. At a review hearing the Court shall review, on the record, the compliance with the case service plan prepared pursuant to § 121 and the previous orders of the Court, including:

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

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

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

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

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

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

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

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

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

(F) If the Child Remains in Placement. If the child remains in placement, the Court shall determine at the disposition hearing and at each review hearing whether the case should be reviewed before the next review hearing required under Section 22(A) (at least every six (6) months). In making this determination, the Court shall consider, but not be limited to, both of the following:

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

(2) Possibility of Early Return Home. Whether there is a reasonable likelihood that the child may be returned to his/her home prior to the next review hearing required by Section 22 (A).

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

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

(I) Agency Report. An agency report shall be filed with the Court at least three (3) working days prior to the hearing and copies provided to all parties or their representatives. The report shall be offered into evidence.

SECTION 23. Permanency Planning Hearing

(A) Timetable. If a child remains adjudicated a child-in-need-of-care and parental rights have not been terminated, the Court shall conduct a permanency planning hearing not more than twelve (12) months after entry of the order of disposition and

every twelve (12) months thereafter, so long as the child remains a child-in-need-of-care. A permanency planning hearing may be combined with a disposition review hearing under Section 22.

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

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

(D) Alternative Permanent Placement Plans. If the Court determines at a permanency planning hearing that the child should not be returned to his/her parent, guardian, or custodian, the ICW Program shall propose one of the following alternative permanent placement plans:

(1) That the child be placed permanently with a relative within the primary service area of the Tribe;

(2) That the child be placed permanently with a relative who is outside the primary service area of the Tribe;

(3) That the child remain in long-term foster or residential care;

(4) That a petition for guardianship under this Code be filed by the current caretaker of the child, the child or the ICW Program; or

(5) That a petition to terminate parental rights under this Code be filed by the presenting officer.

(E) Court's Options. If the Court determines that the child should not be returned to his/her parent, guardian, or custodian, the Court shall order permanent placement with a relative, long term foster or residential care under Section 23(D)(1), (2), or (3), or continue the child in placement for a limited period so that petitions under Section 23(D)(4) or (5) may be filed.

SECTION 24. Authorization of Medical Treatment.

(A) Court Authorization. At any time, regardless of whether a child is under the custody of the Court, the Court may authorize medical or surgical care for a child when:

(1) Parent not Available. A parent, legal guardian, or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case; or

(2) Physician's Opinion. A physician informs the Court orally or in writing that in his/her professional opinion, the life of the child would be greatly endangered without certain treatment and the parent, guardian or other custodian refuses or fails to consent. If time allows in a situation of this type, the Court shall cause every effort to be made to grant the parent, guardian, or custodian an immediate informal hearing, but this hearing shall not be allowed to further jeopardize the child's life or health.

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

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

(D) Oral Authorization. Oral authorization by the Court is sufficient for care or treatment to be given and shall be accepted by any physician or hospital. No physician or hospital nor any nurse, technician or other person under the direction of such physician or hospital shall be subject to criminal or civil liability in the Court for performance of care or treatment in reliance on the Court's authorization, and any function performed thereunder shall be regarded as if it were performed with the child's and the parent, guardian or custodian's authorization.

SECTION 25. Child Protection Records

(A) Children's Court Records. A record of all hearings under this Code shall be made and preserved. All Children's Court records shall be confidential and shall not be open to inspection to any but the following:

- (1) The child;
- (2) The child's parent(s), guardian, or custodian;
- (3) The prospective adoptive parent(s);
- (4) The child's counsel or court appointed special advocate;
- (5) The Children's Court personnel directly involved in the handling of the case; and
- (6) Any other person by order of the Court, having legitimate interest in the particular case or the work of the Court.

(B) Law Enforcement and Program Records. Law enforcement records and files concerning a child shall be kept separate from the records and files of adults. All law enforcement and the Program records shall be confidential and shall not be open to inspection to any but the following:

- (1) The child;
- (2) The child's parent(s), guardian, or custodian;
- (3) The child's counsel or court appointed special advocate;
- (4) Law enforcement and Indian Child Welfare personnel, including the Indian Child Welfare Committee directly involved in the handling of the case;
- (5) The Children's Court personnel directly involved in the handling of the case; and
- (6) Any other person by order of the Court, having legitimate interest in the particular case or the work of the Court.

SECTION 26. Rehearings

(A) Time and Grounds. A party may seek a rehearing or new trial by filing a written motion stating the basis for the relief sought within twenty-eight (28) days after entry of a final order. The Court may entertain an untimely motion for good cause shown. A motion will not be considered unless it presents a matter not previously presented to the Court, or presented but not previously considered by the Court, which if true, would cause the Court to reconsider the matter.

(B) Notice. All parties must be given notice of the motion for rehearing or new trial in accordance with Section 18 herein.

(C) Response by Parties. Any response by parties must be in writing, filed with the Court, and served on the opposing parties within five (5) days after receipt of notice of the motion.

(D) Procedure. The judge may affirm, modify, or vacate the decision previously made, in whole or in part, on the basis of the record, the memoranda prepared, or a hearing on the motion, whichever the Court in its discretion finds appropriate.

(E) Hearings. The Court need not hold a hearing before ruling on a motion for rehearing or new trial. Any hearing conducted shall be in accordance with the rules for disposition hearings. The Court shall state the reason for its decision on the motion on the record or in writing.

(F) Stay. The Court may stay any order pending a ruling on the motion.

SECTION 27. Appeals

(A) Who Can Appeal. Any party to a Children's Court proceeding may appeal a final decision of the Children's Court with the Dry Creek Rancheria's Appellate Court. An order terminating parental rights is appealable by right.

(B) Time for Taking Appeal. Any party seeking to appeal a final Court order shall file a written notice of appeal with the Court within twenty-eight (28) days of the final order.

(C) Standard of Review. The clearly erroneous standard shall be used in reviewing final decisions of the Children's Court.

(D) Record. For purposes of appeal, a record of proceedings shall be made available to the child, his/her parent, guardian, or custodian, the child's counsel and others upon order of the Court. The party seeking the appeal shall pay costs of obtaining the record.

(E) Stay on Appeal. A Children's Court order may be stayed upon order of the Appellate Court.

(F) Conduct of Proceedings. All appeals shall be conducted in accordance with the Dry Creek Rancheria's Rules of Appellate Procedure as long as those provisions are not in conflict with the provisions of this Children's Code.