

**TITLE 14  
HOOPA VALLEY TRIBE  
CHILD/FAMILY ASSISTANCE CODE**

**CHAPTER 1 GENERAL PROVISIONS**

**14.1.01. Short Title**

Title 14 is entitled "The Hoopa Valley Tribe Child Protection/Family Assistance Code".

**14.1.02. Purpose**

The purpose of this Title is to ensure the provision of necessary legal protections and tribal assistance to families to preserve and strengthen them during times of difficulty. The Hoopa Valley Tribe recognizes that families are the core of the community, and that strengthened families result in a stronger community.

Furthermore, this code is enacted to strengthen and reaffirm the inherent right of the Hoopa Valley Tribe to regulate the conduct of its members and persons who consent to its jurisdiction by being physically present within the boundaries of the reservation.

The child/family assistance code shall be liberally interpreted and construed to fulfill the following expressed purposes:

1. To provide for the welfare, care and protection of the children and families on the Hoopa Valley Indian Reservation;
2. To preserve unity of the family, preferably by separating the child from his parents only when necessary;
3. To take such actions as may be necessary and feasible to prevent the abuse, neglect or abandonment of children;
4. To provide a continuum of services for children and their families with emphasis whenever possible on prevention, early intervention and community-based alternatives;
5. To secure the rights of and ensure fairness to the children, parents, guardians, custodians or other parties who come before the children's court under the provisions of this code;
6. To recognize and acknowledge the tribal customs and traditions of the Hoopa Valley Tribe with regard to child-rearing.

**14.1.04 Construction**

Chapter 1 through Chapter 23 shall be exempted from the rules of strict construction and shall be liberally construed to give full effect to the objectives and purposes for which they were enacted. The terms and provisions of Chapter 1 through Chapter 23 shall be construed according to the fair import of their terms,

but when the language is susceptible to differing construction, it shall be interpreted to further the general purposes stated in this Chapter. Where a term is not defined herein, it shall be given its ordinary meaning. Any reference to "he," "him" or other masculine terms shall include male and female persons. Any reference to a singular term includes the plural. "Shall" is mandatory and "may" is discretionary

#### **14.1.05 Definitions**

**(a) "Abandon":** The failure of the parent, guardian or custodian to provide reasonable support and to maintain regular contact with a child. Failure to maintain a parental relationship with the child without just cause for a period of six (6) months constitutes a prima facie evidence of abandonment. Custody with extended family members or voluntary consent to placement does not constitute abandonment unless:

- (1) the parent has violated the original care agreement and is presently unable or unwilling to comply with the terms of that agreement and the care provider is no longer or able to provide care for the child; or
- (2) the parents whereabouts are unknown, despite good faith efforts to locate the parent, and the appointed caretaker is no longer able or willing to care for the child(ren).

A custodial parent's incarceration will not lead to an abandonment case, if the parent can make appropriate arrangements for the child's care.

**(b) "Abuse":** The infliction of physical, emotional or mental injury on a child, which includes where the child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or unusually aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care.

**(c) "Adult":** A person 18 years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.

**(d) "Child":** A person who is less than 18 years old and has not been emancipated by order of a court of competent jurisdiction.

**(e) "Court" or "Children's Court":** The Children's Court of the Hoopa Valley Tribe.

**(f) "Custodian":** A person, other than a parent or guardian, to whom legal custody of the child has been given.

**(g) "Domicile":** A person's permanent home, legal home or main residence. The domicile of a child is generally that of the custodial parent or guardian. Domicile includes the intent to establish a permanent home; or where the parent or guardian considers their permanent home.

**(h) "Emergency Foster Home":** Placement with a family whose home has been licensed to accept emergency placements of children at any hour of the day or night (see "Foster Home").

**(i) "Extended Family":** Defined according to the tribal customs and traditions of the Hoopa Valley Tribe.

**(j) "Family Maintenance Services"** Services provide to a family by the Tribe or other governmental entity in order to maintain the child in the home Family maintenance services are available without regard to income to any of the following:

(1) Families whose child or children have been adjudicated abused, neglected, or abandoned, and where the court has ordered the supervision Children and Family Services while the child remains in the child's home.

(2) Families whose child is in potential danger of abuse, neglect, or abandonment, who are willing to accept services and participate in corrective efforts, and where it is safe for the child to remain in the child's home only with the provision of services.

(3) Families in which the child is in the care of a previously noncustodial parent, under the supervision of the juvenile court.

**(k) "Family Plan"** a document that lists the services to be provided by the Tribe, and the responsibilities of a parent or guardian. The plan must be substantially completed in order for a case filed under this code to be dismissed.

**(l) "Foster Home":** Placement with a family whose home has been licensed under chapter 19 of this code.

**(m) "Foster Home Inspector":** A person appointed by the Tribal Council to inspect and license foster homes under chapter seven of this code.

**(n) "Guardian":** A person assigned by a court of law, other than a parent, having the duty and authority to provide care and control of a child (see "Permanent Guardian," "Temporary Guardian," "Guardian Ad Litem," and "Guardian of Property").

**(o) "Guardian Ad Litem":** A person appointed by the court to represent the child's interests before the court.

**(p) "Indian":** Any member of a federally recognized Indian tribe, band or community, or Alaska Natives, or a person considered by the community to be Indian.

**(q) "Least Restrictive Alternative":** Whenever it is necessary to protect an individual, the least restrictive method of intervention must be used to protect the freedom and independence of the person. The least restrictive alternative is that environment which is the most like the person's home setting and which is most capable of supporting the protected person's physical and mental health and emotional being.

**(r) "Neglect":** The failure or refusal of the parent, guardian or custodian to provide reasonably adequate food, clothing, shelter, medical care, education or supervision for the child's health and well-being, or the failure or refusal of a parent to protect a child from abuse or mistreatment that the parent knew of or should have known of.

**(s) "Parent":** Includes a natural or adoptive parent, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.

**(t) "Permanency Plan":** The long term placement plan for a child who has been found within the jurisdiction of the court because of abuse or neglect.

**(u) "Permanent Placement Services"** Services provided by Children and Family Services, or another governmental agency, to children who cannot safely live with their parents and are not likely to return to their own homes. Permanent placement services are available without regard to income to children have been adjudicated abused, neglected, or abandoned under this code and the court has determined that reunification, adoption, or guardianship is inappropriate.

**(v) "Physical Abuse":** The non accidental infliction of serious physical harm on a child. The court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm.

**(w) "Permanent Guardian":** A guardian who has been granted long term guardianship status as set forth in chapter 22 of this code. This is a judicially created relationship between child and caretaker which is intended to be permanent and self sustaining, as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision making.

**(x) "Protective Services Worker":** The social services worker, law enforcement personnel or any person who performs the duties and responsibilities set forth in section 14.2.04 of this code.

**(y) "Reservation":** The Hoopa Valley Indian Reservation.

**(z) "Reunification Services"** Services provided to a family by the tribe to reunite the child separated from his or her family because of abuse, neglect or abandonment. Reunification services are available without regard to income where the child or children have been adjudicated abused, neglected, or abandoned under this code, and where the court has ordered Children and Family Services to supervise the reunification efforts of the family. Family reunification services will only be provided when a child has been placed in out-of-home care, or is in the care of a previously noncustodial parent under the supervision of the juvenile court. When a minor has been placed in foster care with a nonparent, family reunification services may be provided to one or both parents.

**(aa) "Sexual abuse":** Means any of the following:

- (1) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen;
- (2) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person;
- (3) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that, it does not include acts performed for a valid medical purpose;
- (4) The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that, it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose;
- (5) the taking of photographs or use of other media for preserving images of any of the above acts and/or the reproduction, sales, or other distribution of images of any of the above described acts

**(bb) "Substantiated Report":** A report of child abandonment, abuse, or neglect that has been investigated and after investigation it appears to the investigator that there is probable cause to believe the allegations are true.

**(cc) "Temporary Guardianship":** A guardian who has been granted temporary guardianship status as set forth in chapter 22 of this code.

**(dd) "Tribal Council":** The Tribal Council of the Hoopa Valley Tribe.

**(ee) "Unsubstantiated Report":** A report of child abandonment, abuse, or neglect that has been investigated and after investigation it appears to the investigator that there is no probable cause to believe the allegations are true.

**(ff) "Voluntary Placement"** means an out-of-home placement of a minor, by or

with participation of a Tribal or State agency, after the parents or guardians of the minor have requested the assistance of the agency and signed a voluntary placement agreement.

**(gg) "Voluntary Placement Agreement"** means a written agreement, binding on the parties to the agreement, between the Tribal or State agency, or any other agency acting on its behalf, and the parents or guardians of a minor child which specifies, at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement.

#### **14.1.06 Jurisdiction**

##### **(a) General**

The Court has jurisdiction on all proceedings under this Title over child or family assistance situations occurring within the external boundaries of the Hoopa Valley Reservation to include guardianships, voluntary or court ordered, child abandonment, abuse or neglect as defined by this code, and the emancipation of minors. The jurisdiction of the family court is civil in nature and includes the right to issue all orders necessary to insure the safety of the family, especially children, within the exterior boundaries of the Hoopa Valley Reservation.

##### **(b) Personal**

###### **(1) Children**

The family court has jurisdiction over the following persons who are alleged to have been, or who have been determined to have been, abandoned, abused, or neglected, as defined in Section 14.1.05 above:

(A) Any Indian child who resides or is domiciled within the exterior boundaries of the Hoopa Valley Reservation who has been abandoned, abused, or neglected, as defined in Section 14.1.05 above, or the sibling of such a child;

(B) Any Indian child who resides or is domiciled within the exterior boundaries of the Hoopa Valley Reservation whose siblings have been abandoned, abused or neglected as defined in section 14.1.05 above, if the court finds that the child is at substantial risk to be abandoned, abused or neglected. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child;

(C) Any child in whose case the Hoopa Valley Tribe has a right to intervene in, or transfer to Tribal Court, under the Indian Child Welfare Act

(D) Any child who is a member of the Hoopa Valley Tribe, or eligible for membership in the Hoopa Valley Tribe, who seeks emancipation

(2) Other persons

In addition, the family court has jurisdiction over the following individuals:

(A) Immediate and Extended family members, or legal custodians or guardians, of a child described in (a) above, provided those family members either live with the external boundaries of the Hoopa valley reservation, or voluntarily submit to the personal jurisdiction of the court. Such jurisdiction includes but is not limited to the power to compel attendance at court or other proceedings related to the disposition of a child's case, or impose restrictions, conditions and requirements relating to the care, guardianship, custody and/or control of a child, and/or to punish the adult for contempt of court.

(B) Any off-reservation person or agency, whether Indian or non-Indian, who has consented to the personal jurisdiction of the court. As a precondition of obtaining or retaining the custody or guardianship of a child pursuant to this Code anyone who resides off reservation must execute a consent form consenting to the personal jurisdiction of the Family Court..

**(c) Continuing Jurisdiction**

Once the Family Court obtains jurisdiction over family member or a youth, the court retains jurisdiction over children and their extended families who leave the exterior boundaries of the reservation, unless declined by the court or by automatic termination in the following cases:

1. The case is dismissed by the Court; and/or
2. The child turns eighteen (18) years of age

The court retains jurisdiction to collect arrearages of support owed by parents in any case where jurisdiction is automatically terminated.

**14.1.07 DECLINE OF JURISDICTION**

**(a) Grounds**

The Tribal Court may decline to exercise its jurisdiction if it finds any of the following exist:

- (1) Another court has the jurisdiction to hear the case and it would be more convenient for the parties than the Tribal Court;
- (2) One or more of the parties is not a person over whom the Tribal Court may properly exercise its jurisdiction; or
- (3) The Hoopa Valley Tribe cannot provide necessary and needed services to the family or child.

**(b) Procedure**

The Division of Human Services, or the parent; guardian, or child can bring a written motion to dismiss based on the tribe's inability to provide necessary and needed services. The Motion to Dismiss must state:

- (1) what services have been offered; and
- (2) what services are still needed but not available; and
- (3) the factual reasons the services are needed; and
- (4) the factual reasons the services are unavailable.

**14.1.08 TRANSFER OF JURISDICTION**

**(a) Application of the Indian Child Welfare Act**

The procedural requirements in the Indian Child Welfare Act, 25 U.S.C. 1901-1963, are not binding upon the Children's Court unless 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. If the child is known to be, or discovered to be, an enrolled member of another tribe, the case worker must contact the child's tribe to determine if additional services are available to the child through his tribe. If the services available through the child's tribe are better suited to address the child's needs, the case worker, either parent, or the child's legal representative may file a petition for transfer to the other Court.

**(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.

(1) Receipt of Notice

The Tribal agent for service of notice of state court child custody proceedings, as defined by the Indian child Welfare act, is the Director of Human Services. The Court clerk will provide the Director with a copy of any notice of a potential transfer case received directly by the Court.

(2) Investigation and Pre-Transfer Report by Human Services

Upon notice of a request for transfer from another court, the Division of Human Services must conduct an investigation and file a written report with the Tribal Court within five (5) days of the receipt of notice. The report must assess whether or not the Tribe can provide adequate services to the parties.

(3) Recommendations for Transfer or Intervention



Within five (5) days of the receipt of the Human Services report, the Children's Court will make a written finding as to whether or not the transfer would be detrimental to the best interest of the child. A copy of these findings will be served upon the parties to the case, and the other court.

(4) Request for Transfer

The Division of Human Services or selected tribal representative must request transfer within five (5) days of receipt of Children's court finding that transfer would be in the best interest of the child. .

(5) Acceptance of Transfer

The Tribal Court will not accept a transfer from State Court unless:

- (A) a parent or Indian custodian's petition to State Court for transfer is granted, or;
- (B) the Tribe's petition to State Court for transfer is granted, and;
- (C) the Tribal Human Services Division's pre-transfer report demonstrates to the Tribal Court that adequate services can be provided by the Tribe.

(6) Hearing(s)

Upon receipt of transfer jurisdiction from State Court, the Division of Human services must file a child protection/family assistance petition, and appropriate hearing(s) will be held in accordance with this code.

**14.1.09 INTERVENTION IN STATE COURT PROCEEDINGS**

(a) The Tribe may Intervene in State Court child custody proceedings, as defined by the Indian Child Welfare Act, at any point in the proceedings, and;

(b) The Tribe shall intervene in such matters unless such intervention would be impracticable under the circumstances of the case.

(c) The Division of Human Services, or selected tribal representative, must file a motion to Intervene in the state court within five (5) days of receipt of notice of the state court case.

**14.1.10 FULL FAITH AND CREDIT; CONFLICT OF LAWS**

**(a) State Court Orders**

State orders involving children over whom the children's court could take jurisdiction will be recognized by the Children's court only after a full independent review of such state proceedings has determined:

- (1) the state court exercised proper subject matter and personal jurisdiction over the parties, 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 parties 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**

Court orders of other Tribal Courts involving children over whom the children's court could take jurisdiction will be recognized by the Children's court after the Court has determined that:

- (1) the other Tribal Court exercised proper subject matter and personal jurisdiction over the parties, and;
- (2) due process was accorded to all interested parties participating in the other Tribal Court proceeding; and
- (3) the other Tribal Court proceeding does not violate the public policies, customs, or common law of the Tribe

**14.1.11 SOVEREIGN IMMUNITY PRESERVED**

Nothing in Chapter 1 through Chapter 23 shall be deemed to constitute a waiver by the Hoopa Valley Indian Tribe of its sovereign immunity, rights, powers or privileges.

**14.1.12 INCONSISTENT PROVISIONS OF OTHER LAW**

It is the intent of the Tribal Council to enact this Title to specifically address the jurisdiction of the Tribal Court in cases where allegations of child abuse, neglect abandonment have been made, or where a child seeks an order of emancipation. The procedures in the court shall be governed by the rules of procedure for the tribal court, found in titles 2 and 3 of Hoopa Valley Code that are not in conflict with this code. Any specific procedure within this code shall apply where a conflict exists between the more general procedure of Title 2 and the more specific procedure of this code. If the court finds that a case filed under the provisions of this code is actually a private party child custody dispute, the case must be dismissed under this title, and filed in compliance with the provisions of Title 14A.

**14.1.13 SEVERABILITY**

If any provision of this code or its application to any person or circumstance is held invalid, the remainder of the Title, or the application of the provision to other persons or circumstances, remains in effect.

**14.1.14 RELATIONSHIPS WITH OTHER AGENCIES**

**(a) 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, 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 approval of the Tribal Council if it involves an expenditure of Tribal funds.

**(b) Social Services**

The Children's Court will 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.

**(c) Contracts**

The Children's Court may negotiate contracts with Tribal, Federal or State agencies and/or departments on behalf of the Tribal Council for the care and placement of children before the children's court subject to the approval of the Tribal Council before the expenditure of Tribal funds.

**CHAPTER 2 CHILDREN'S COURT PERSONNEL**

**14.2.01 CHILDREN'S COURT JUDGE**

**(a) Appointment**

The Children's Court Judge(s) will be appointed or elected in the same manner as the Tribal Court Judge(s). Where so qualified, and if the caseload allows, the Chief Tribal Court Judge may act as the Children's Court Judge.

**(b) Qualifications**

The general qualifications for Children's Court judge(s) will be the same as the qualifications for Tribal Court Judge(s). In addition, Children's Court Judges must have significant prior training and/or experience in child welfare matters or consult with advisors with such experience.

**(c) Powers and Duties**

In carrying out the duties and powers specifically enumerated under this Child/Family Protection Code, Judges of the Children's Court have the same duties and powers as Judge of the Tribal Court.

**(d) Disqualification or Disability**

The rules on disqualification or disability of a Children's Court Judge are the same as those rules that govern Tribal Court Judges.

**(e) Judicial Education Requirement**

Any Judge appointed to the Children's Court must attend at least one training annually on child welfare issues.

**14.2.02 GUARDIAN AD LITEM**

At any stage of the proceedings conducted under this code the Children's Court may appoint separate counsel for the child, without affecting the right to counsel of the

parent or guardian, to act as guardian ad litem representing the child's best interests.

#### **14.2.03 ADDITIONAL COURT PERSONNEL**

The court may set qualifications and appoint additional juvenile court personnel such as guardians ad litem; court appointed special advocates (CASAs), children's court advocates, and/or mediators whenever the court decides that it is appropriate to do so.

#### **14.2.04 PROTECTIVE SERVICES WORKERS**

##### **(a) Division of Human Services**

Tribal Protective Services workers will be employed by the Division of Human Services. To assist the protective services workers in performing their duties, the head of the Division of Human Services will do the following:

- (1) Establish internal policies and procedures for a database of confidential child abuse and neglect records;
- (2) Establish internal policies and procedures for the maintaining the confidentiality of child abuse and neglect records.
- (3) Establish internal policies and procedures governing the retention of, and access by outside agencies to, the all confidential data held by the Division;
- (4) Establish internal policies and procedures governing timelines for actions required by this code, where no timeframe is included in the code;
- (5) Establish internal policies and procedures governing the priority of investigation of abuse and neglect reports, where multiple reports are made within close proximity to one another;
- (6) Negotiate agreements for services, record sharing, referral, and funding for child welfare services pursuant to placement and service orders.
- (5) Establish internal procedures for the Division's acceptance of legal custody of Tribal children when ordered by the Tribal Court.

##### **(b) Power and Duties**

Protective Services Workers will possess the following powers and perform the following duties:

- (1) Process all Indian Child Welfare ("ICW") notices sent to the Tribe, assist the Tribe in intervening in Indian child custody proceedings, petition for transfer of Indian child custody proceedings where appropriate, and carry out all other duties and responsibilities regarding all Indian child custody matters pursuant to the instructions or order of the Court;
- (2) Receive and investigate reports of suspected child abuse and neglect

involving any Indian child residing within the exterior boundaries of the Hoopa Valley Reservation and determine whether to initiate child protection proceedings;

- (3) Determine whether and where an Indian child should be placed pursuant to the emergency provisions of this Code, and provide crisis services necessary to support the family during the intake process;
- (4) Make referrals of cases to other agencies and share information with other agencies if their assistance appears to be needed or desirable pursuant to an internally established protocol on the sharing of confidential data;
- (5) Make placement and services reports and recommendations to the Court in child protection proceedings, including a plan of family rehabilitation, treatment and care, based on the best interests of the child;
- (6) Work together with parents and children, if of suitable age and discretion, to set family plan goals;
- (7) Supervise and assist Indian children pursuant to child protection dispositions, offer services to support the family, and make an affirmative effort to obtain necessary or desired services for the child and the child's family;
- (8) Initiate petitions for the termination or modification of parental rights;
- (9) Be present in Court when cases filed under this code are heard;
- (10) Locate, certify, and supervise placements; and
- (11) Furnish such other related services as may be directed by the Court.

### **CHAPTER 3 ABUSE AND NEGLECT REPORTING PROCEDURES**

#### **14.3.01 REPORTER AGENCY**

The Hoopa Valley Division of Human Services is the agency primarily responsible for investigating allegations of abuse or neglect within the exterior boundaries of the Hoopa Valley Tribe. Law Enforcement personnel can assist such an investigation, or pursue their own investigation when a crime is alleged.

#### **14.3.02 PERSONS SPECIFICALLY REQUIRED TO REPORT**

Those persons who are mandated to report suspected abuse or neglect, as defined under this code, include any physician, nurse, dentist, optometrist, or any other medical or mental health professional; school principal, school teacher, or other school official; social worker; child day care center worker or other child care staff including foster parents, residential care or institutional personnel; counselor; peace officer or other law enforcement official; judge, attorney- except where it conflicts with attorney client privilege, court counselor, clerk of the court, or other judicial system official.

#### **14.3.03 Anonymous Reports**

Any person, other than those specified in section 14.3.02 above, may remain