

DOMESTIC RELATIONS CODE

OF THE KENAITZE INDIAN TRIBE

KENAITZE INDIAN TRIBE

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DOMESTIC RELATIONS CODE

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CHAPTER 1
GENERAL PROVISIONS

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Section 1. History and Purpose

Since time immemorial, we the Dena’ina Athabascan people, including the Kenaitze Indian Tribe, have resolved dispute and conflict, maintained community peace, and delivered justice within our Tribal Territory through the use of our Traditional Athabascan Laws, Customs, and Practices.

The purpose of this law is to provide policies and guidance for the Kenaitze Indian Tribe to take an active role in providing for the health, safety, and welfare of the Kenaitze people, to preserve and strengthen family ties whenever possible, to protect and preserve tribal heritage and cultural identity of the people within the Tribe's jurisdiction, and to promote cooperation with the Tribe by other courts and agencies in fulfilling the purposes of this law.

The intention of this law is to promote the health, safety, and welfare of the most valuable resource of the Kenaitze people. The welfare of our children and families is of the utmost importance. Families and children must receive the care and guidance necessary to allow them to become healthy, content, and productive members of society.

Section 2. Authority and Jurisdiction

The Kenaitze Tribal Government regulates domestic relations matters under the authority of its inherent sovereign powers as a federally recognized Indian tribe, under any additional new powers so delegated by Congress, under unwritten tribal law, under the Constitution of the Kenaitze Indian Tribe, and under written tribal ordinances. The Kenaitze Tribal Court shall have the authority to hear and decide all matters under this Code when one or more of the parties in a case are tribal members or are eligible for membership in the Kenaitze Indian Tribe or when the health, safety, or welfare of the tribal members or other residents is affected. Territorial jurisdiction shall not be a factor in establishing jurisdiction under this Code.

A. Jurisdiction over Children's Matters

1. In General. The Kenaitze Tribal Court shall have the authority to make decisions about matters involving children when the children are members or are eligible for membership in the Kenaitze Indian Tribe; when one or more of the parties in a case are tribal members or are eligible for membership in the Kenaitze Indian Tribe; or when the health, safety, or welfare of the tribal members or other residents is affected. Territorial jurisdiction shall not be a factor in establishing jurisdiction under this Code.

2. Exclusive jurisdiction cases. Once the Tribe exercises its jurisdiction in a child welfare case, the Tribe acquires exclusive jurisdiction over all aspects of the case as a matter of tribal law. Upon filing of a complaint or petition under this Code or transfer of a child custody proceeding to this Court, the child who is the subject of the proceeding becomes a ward of the Tribal Court, and remains so until the case is dismissed or concluded, or until the Tribal Court gives authority to another government or another court by Tribal Court Order.

3. Emergency jurisdiction over non-Tribal children. Where a child who is not a tribal member or eligible for membership in the tribe, is physically present on Tribal Territory and is faced with potential abuse or neglect and it appears that

no other court is in a position to intervene within the necessary time frame, the Tribal Court may exercise temporary emergency jurisdiction as necessary to protect the child. Such jurisdiction will not be exclusive and will protect the child only for such time as is necessary for the matter to be brought to the attention of a court that has full jurisdiction over the child.

4. Concurrent jurisdiction cases. If the child is a member of or eligible for membership in more than one tribe, the Kenaitze Tribal Court shall make efforts to communicate with the other tribe or tribes so that, if that tribe is also going to assert jurisdiction, a cooperative jurisdictional arrangement can be explored. If information is provided to the court to the effect that a state court case was already pending in state court at the time the Tribal Court case was filed, the Tribal Court shall make efforts to communicate with the state court to work out any jurisdictional issues.

5. Jurisdiction not based on territory. The Kenaitze Tribal Court has the authority to hear and decide children's cases involving tribal members or children eligible for tribal membership even if the children do not live within their Territory.

Section 3. Applicability

This Code shall be applied to all new cases as well as all pending and existing cases at the Court's discretion or as is appropriate.

Section 4. Best Interest of the Child

In all cases involving children, the Kenaitze Tribal Court shall hear all the facts and evidence brought before it and shall respectfully consider the rights of all parties in the case, however, those of the child shall be most important. The best interest of the child shall be more important than the rights of any other person or entity.

In determining what is in the best interest of the child, the Court shall consider the following factors:

1. The basic needs of the child, including, but not limited to, physical and medical needs, mental and emotional need, educational and cultural, and any other special needs of the child;
2. Any evidence of violence, domestic violence, child abuse or child neglect in the involved adult's household(s) as determined by a criminal background check and/or by testimony of reliable sources;
3. Any evidence of substance abuse [for definition, see Section 6, below] by the involved adults or someone living with them that would or does directly affect the emotional or physical well being of the child;
4. The existing bond between the involved adults and the child;
5. The ability of the involved adults to provide a stable home environment and to meet all of the needs of the child;
6. Whether the involved adults are likely to encourage a positive relationship between the child and the other persons with whom the child has emotional ties;
7. The advantages of keeping the child in the community where the child resides; and
8. Any other things the Court feels are relevant to the best interest of the child.

Section 5. Guardian *ad litem* and CASAs

The Tribal Court may appoint a Guardian *ad litem* and/or CASA (Court Appointed Special Advocate) for a child in any case involving child abuse or neglect or any other case where the Court deems it necessary for a minor child to have such representation.

Section 6. Child Placement Preferences

The following placement preferences shall be applied in all cases where a child is placed out of the home, unless the Court finds that it would be in the child's best interest to vary the order of preference or place the child not according to these preferences:

1. A member of the child's extended family who resides closest to or in the city or community in which the child resides;
2. A member of the Kenaitze Indian Tribe that resides within the tribe's Territory;
3. A foster home, licensed, approved or specified by the Kenaitze Indian Tribe;
4. A member of another tribe that resides in or around the Tribe's Territory and with whom the child is culturally related.
5. A member of the child's extended family who resides elsewhere;
6. A resident of Kenai or the surrounding communities;
7. A group treatment home.

Section 7. Family Receiving Home

In lieu of placing the child in an out-of-home placement, the Court may order the family to reside in a Family Receiving Home (hereinafter "FRH"). A FRH is a residential, therapeutic home designed to prevent the removal of children from their parents' care by providing intense services and supervision to the family unit. A FRH can be either 1) a separate facility designated by the Tribe for that purpose or 2) the home of a family within the Tribe that has been approved by the Tribe. The

family may be ordered to participate in a FRH only if this service is available and only if it is in the child's best interest. The Tribe may develop further policies and procedures with regard to the development of the Family Receiving Home.

Section 8. Definitions

Unless otherwise specified, the following words and phrases, whenever used in this Code, shall have the following meanings:

"Adoptive placement" means the permanent placement of a child for adoption.

"Adult" means a person who is 18 years of age or older.

"CASA" means a Court Appointed Special Advocate trained by the Tribe or other approved organization.

"Child" means a person who is under 18 years of age.

"Child protection proceeding" means a case where a child is found to be a "child in need of aid," a foster care placement case, a termination of parental rights case, a preadoptive or adoptive placement case, or an adoption case that is contested by a parent, custodian or guardian.

"Corporal Punishment" means the infliction of excessive bodily pain as a penalty for disapproved behavior. It includes actions such as shaking, spanking, delivering a blow with a part of the body or an object, slapping, punching, pulling or action that seeks to induce pain.

"Custodian" means a person who has been given responsibility to care for a child either by a parent, or under tribal custom, court order, tribal law or State law.

"Domestic violence" Domestic violence means assault, threats of violence, or physical, sexual, or mental abuse of a person when the victim is a spouse, a former spouse or partner, an extended family member, a boyfriend or girlfriend, or any other person who has been an intimate partner, or a member of the social unit made up of those living together in the same dwelling as the victim or perpetrator.

"Extended family" means the person's parents, children, grandparents, great-grandparents, great-aunts, great-uncles, aunts, uncles, cousins, sisters, and brothers, or someone who is considered to be extended family under the traditional laws of the Kenaitze Tribe.

"Foster care placement" means any action removing a child from his/her parent or custodian for temporary placement in a foster home, a relative's home, an institution or the home of a guardian where the parent or custodian cannot have the child returned on demand.

"Foster home" means a home certified or licensed to provide foster care by the Kenaitze Tribe or another federally recognized tribe or a state licensed home.

"Guardian" means a person who is not a parent and is appointed by a tribal or state court to have legal custody of a child. A "Guardian" is not the same thing as a "Guardian *ad litem*."

"Guardian *ad litem*" means a person appointed by the Kenaitze Tribal Court to look after the best interests of any child involved in a case under

this Code. The guardian *ad litem* (or GAL) shall be a full party in all cases. The guardian *ad litem*'s job is to investigate facts in the case and advise the Court what actions the Court should take that would be in the child's best interest. The Court may adopt the advice of the GAL in whole or in part, or for good cause, may act or order action that is different than the advice of the GAL.

"Involved agency" means an agency that is a party to the case due to the request of the Tribe or because of the jurisdiction of another government over the case. Examples of this might be the Nakenu Family Center, State of Alaska OCS, or the social services department of another tribe or county in another state.

"Most significant contacts" means, among other things, that the Kenaitze Tribal Court shall consider, but is not limited to, the following factors:

1. Length of time the child has lived in or near the Kenaitze Tribal Territory; and
2. The child's participation in the activities of the Kenaitze Indian Tribe; and
3. The child's fluency in the Native Language of the Dena'ina People; and
4. Whether there has been a previous case with respect to the child by the Kenaitze Tribal Court; and
5. The tribal membership of the child's custodial parent or other custodian; and

6. The child's self identification with the Kenaitze Indian Tribe;
7. Matriarchal Considerations; and
8. Any other information relevant to the child's contacts with the Kenaitze Indian Tribe.

"Parent" means the biological parent of a child or any person who has lawfully adopted a child, whether in State or Tribal Court, or under tribal custom. It shall not mean any person as to whom the parent-child relationship has been lawfully terminated.

"Parties" means Petitioner(s) and Respondent(s) listed in the Petition to use the Tribal Court, the guardian *ad litem*/CASA and any other person or entity who is given the right by the Tribal Court to express and protect their interests in a case.

"Preadoptive placement" means the temporary placement of a child in a foster home or institution after the termination of parental rights, but prior to or in place of adoptive placement.

"Probable cause" for the purposes of a "child protection proceeding" means evidence from a reasonable, trustworthy source that would be a reasonable ground for belief that a child is a "child in need of aid" and that an investigation and hearing should be conducted to determine all the facts.

"Substance Abuse" means when the use of drugs, alcohol, or other mind-altering substances negatively affects any aspect of a person's life or their children's lives.

"Termination of parental rights" means any action resulting in the involuntary termination of the parent-child relationship.

"Ward" means a child who has been taken into custody by the Court making the Court the child's legal guardian.

CHAPTER 2

CHILD PROTECTION FOR CHILDREN IN NEED OF AID

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Section 1. Tribal Definition of 'Child In Need Of Aid'

Child protection cases involve a 'child in need of aid' as defined as a child who:

1. Refuses to live at home with significant reason, or refuses to accept available care;
2. Has no parent, guardian, custodian or relative caring for or willing to care for him or her;
3. Has suffered substantial physical abuse or neglect as result of conditions created by the child's parent, guardian or custodian; or
4. Is in need of medical and/or mental treatment, needs help to relieve or prevent substantial physical harm or mental harm as shown by failure to thrive, severe anxiety, depression, withdrawal, exaggerated, inappropriate, unusually aggressive behavior, or hostility toward themselves or others and the child's parents are unwilling to provide the medical or mental health treatment;
5. Suffered substantial physical harm or there is substantial and immediate risk that the child will suffer such harm as a result of the actions of or conditions created by the child's parent, guardian, or custodian;
6. Has been sexually abused by the child's parent, guardian, or custodian; has been sexually abused as a result of conditions created by the child's parent, guardian, or custodian; and/or has been sexually abused because the parent, guardian, or custodian failed to adequately supervise or protect the child; or
7. Has suffered educational neglect, such that the child is not enrolled in school or not being properly homeschooled, and/or the child has had a substantial number of unexplained school absences.

Section 2. Confidentiality of Child Protection Cases

All child protection cases shall be considered and treated as confidential. All Tribal Court Judges, the Tribal Court Clerk, tribal employees or other tribal officials who participate in a case, and involved agency personnel shall be sworn to confidentiality under the Oath of Confidentiality provided in Section 12 of the Tribal Court Code.

Section 3. Duty to Report Child Abuse and Neglect

The following people are required to report cases of suspected abuse or neglect of a child within the Kenaitze Tribal Court's jurisdiction. This duty shall apply 24 hours per day 7 days per week.

1. The child's family or caretaker;
2. Any tribal employee, including the Tribal Administrator;
3. Any tribal appointed or elected official;
4. Any employee of a tribally owned business, even if not managed by the Tribe;
5. Any medical doctor or dentist, nurse, physicians' assistant or human services worker;
6. Any person or agency or employee of such agency with a fiduciary duty to the child such as a lawyer, accountant, financial institution, property manager, or conservator;
7. Any person who has good reason to suspect that a child had been or is being abused or neglected; or
8. Volunteers of the Kenaitze Tribal Court.

Section 4. Immunity for Reporting and Confidentiality

A person who in good faith reports suspected abuse or neglect of a child is immune from any civil or criminal suit based on that person's report. The name

of a reporter who reports abuse as required by this Chapter is confidential and shall not be released to any person unless the reporter consents to the release because it would be necessary to protect the child. No evidentiary privilege except for the attorney-client privilege may be raised as a justifiable defense or reason for failing to report suspected child abuse or for testifying as required by this Chapter.

Section 5. Tribal Court Records of Child Protection Cases

Court records in child protection cases shall not be released to anyone besides the parties to the case without the consent of the Kenaitze Tribal Court. Hard copies of such records shall be kept behind a locked system and shall only be accessible by persons directly authorized by the Kenaitze Tribal Court. Orders, letters, or memos may be given as needed to schools, hospitals, banks, or similar entities for the purpose of verification of who has custody, guardianship, or parental rights to a child.

Section 6. Legal Custody and Status as Ward of the Kenaitze Court in Child in Need of Aid Cases

A child becomes a ward and under the legal custody of the Kenaitze Tribal Court when the child is found to be a child in need of aid as defined in Section 1 of this Chapter. A child may be found to be a child in need of aid upon a hearing conducted under the procedures set forth in this Chapter. In emergency situations when there is no time to hold a hearing, a child may be taken into legal custody and made a ward of the Tribal Court until a hearing may be held. A child may also become a ward of the Kenaitze Tribal Court when a child in need of aid case is transferred from another court. A child remains a ward of the Kenaitze Tribal Court until the Court closes the case or transfers the case to another court.

Section 7. Urgency

All child protection cases shall be considered urgent and shall be placed ahead of all other cases that the Kenaitze Tribal Court may have before it.

Section 8. Rights and Best Interest of the Child

In all child protection cases, the Court shall hear all the facts and evidence brought before it and shall respectfully consider the rights of all parties in the case when deciding what is in the child's best interest. The best interest of the child, as defined in Chapter 1, Section 4 of this Code, shall be placed above the rights of any other person or entity.

Section 9. Filing a Petition in a Child Protection Case

Any person or agency who has reason to believe that a minor tribal member or child living within the Tribe's Territory is a "child in need of aid" shall be permitted to file a Petition to use the tribal court. Upon receipt of the Petition, the Court will contact the parties and notify all the parties of the Petition and any upcoming hearings that have been scheduled. In an emergency, the Court may hold a telephonic hearing with the Petitioner.

Section 10. Contents of Child Protection Petition

The Petition for child protection cases shall provide the following information, provided that such information is available to the Petitioner:

1. The name, address and age of the child;
2. The names and addresses of the child's parents and any custodians of the child;

3. A statement of which tribe(s) the child is a member or with which tribe(s) the child is eligible for membership. This statement should include facts that indicate that the Kenaitze Indian Tribe is the tribe with the most significant contacts with the child;
4. The names and addresses of any other person or tribe with an interest in the child;
5. The reason why the petitioner believes that a child needs protection; and
6. Any available written evidence of injuries, abuse or neglect (doctor report, public health nurse report, health aid report, teacher's report, report of witness to injury, abuse or neglect, etc.), and/or any other information that may be helpful in identifying the cause of the child's injuries or neglect.

Section 11. Emergency Custody

After receiving a Petition, the Kenaitze Tribal Court may take a child into custody and make a temporary placement without notification and full hearing if the Court has reason to believe that immediate removal is necessary to prevent imminent physical damage or harm to the child. The Court shall issue an emergency Order describing the Court's action. If necessary in an emergency situation, the Petition may be communicated to the Court by phone or fax but the original Petition should be provided to the Court as soon as possible. As soon as possible after the emergency hearing, the Court shall serve the parents or guardians with a copy of the emergency Order. If the child is not a tribal member or eligible for tribal membership, the Court shall notify the child's tribe or the appropriate state officials. Emergency custody arrangements shall be for no more than 30 days.

- A. Use of Tribal Funds in Emergency Circumstances. Notwithstanding other policies or ordinances of the Tribe, in an emergency situation, when a child needs to be removed from a home and travel expenses are required to move the child, the Tribe shall, funds permitted, disburse the required funds to the Court Clerk or other authorized person that is making the travel arrangements provided that at least one Judge and/or the Acting Director has authorized the disbursement of funds. Phone, fax, and email authorizations for disbursement of funds in such emergency situations shall be considered valid authorizations.

Section 12. Temporary Custody Hearing after Emergency Custody Has Been Taken

- A. Notification and Hearing within 30 days: After the Court has taken a child into tribal custody under emergency circumstances, the Court shall hold a temporary custody hearing within 30 days. The Court shall issue a Notice to Appear in Tribal Court to the parent(s), custodian, and/or guardian of the child, within a reasonable length of time before the hearing.
- B. Failure to Appear in Court: After reasonable notification has been given, the Court may proceed with the hearing even if parents, custodians, and/or guardians fail to appear in Court.
- C. Witnesses: At the temporary custody hearing, the parent(s), custodian, and/or guardian shall have the right to call their own witnesses and to question witnesses called by any other party. Judges may question all witnesses.
- D. Advisors/Attorneys: The parents or custodians of the child have the right to have an Elder or other traditional advisor with them at a temporary custody

hearing. (See Kenaitze Tribal Court Code, Chapter 2, Section 23). The parents or custodians of the child also have the right to bring attorneys or other counsel with them to the temporary custody hearing. The hiring and payment of counsel shall be the sole responsibility of the parent. (Please refer to Kenaitze Tribal Court Code, Chapter 2, Section 24 for further laws regarding Attorneys and Other Counsel).

E. Decision of the Court: After determining jurisdiction, reviewing the Petition, and hearing the case, the Court shall issue an Order based on the child's best interest as defined in Chapter 1, Section 4 of this Code. The Court's options include, but are not limited to, the following:

1. If the Court decides that the child is not a "child in need of aid," the Court may return legal and physical custody to the parents, custodian, or guardian and dismiss the case; or
2. If the Court decides that the child is a "child in need of aid," the Court may retain legal custody of the child for a period not to exceed one year. If the Court retains legal custody, it can either:
 - a. Place the child with the child's parents, custodian, or guardian with specific directives to participate in family-oriented services, as described in subsection 3, below; or
 - b. Place the child in an appropriate foster care placement based on the preferences of Chapter 1, Section 5 of this Code and, in addition, direct the parents to participate in family-oriented services as described in subsection 3, below;
3. Family Services. If the Court finds that a child is a "child in need of aid," it may order the child, parent(s), custodian, or guardian to participate in any of the following services:
 - a. Educational classes, including but not limited, to parent education;
 - b. Alcohol and/or drug assessments and any recommended treatment;
 - c. Psychological or psychiatric assessments and treatment;

- d. A Family Receiving Home as described in Chapter 1, Section 6 of this Code; and/or
 - e. Any other treatment or programs the Court feels are appropriate, are in the child's best interest, and are likely to result in reunification of the child with the family.
4. Monitoring and Progress Reports: The Court may designate specific persons or entities to oversee the execution of the Kenaitze Tribal Court Order and monitor the family's progress and report such progress to the Court.

Section 13. Temporary Custody Hearing in Non-Emergency Situations

When the Kenaitze Tribal Court receives a Petition to take a child into tribal custody in non-emergency circumstances and determines that the Tribal Court has jurisdiction and chooses to hear the case, the Court shall hold a Temporary Custody Hearing within 30 days to determine whether to take a child into tribal custody. A Notice to Appear in Tribal Court shall be issued to the parent(s), custodian, and/or guardian of the child, within a reasonable length of time before the hearing. The Court shall follow the same procedures and have the same options as it has for temporary custody hearings in emergency cases.

Section 14. Temporary Custody Orders

- A. Orders: The Court may issue written or oral Orders for all temporary custody cases that shall fully communicated to parties in those cases and kept in the permanent records of the Kenaitze Tribal Court.
- B. Short Versions of Orders: If necessary to protect confidentiality, the Court may also issue to custodians a short version of temporary custody Orders

for the use of verification of custody for schools, hospitals, banks and similar entities when necessary.

- C. Extension of Temporary Custody Orders: Extensions of Temporary Custody Orders may not exceed one year.

Section 15. Review Hearing

- A. Review Hearing: The Tribal Court may conduct review hearings periodically while a child is in their legal custody, and shall conduct at least one review hearing before the Tribe's legal custody expires.
- B. Request for Review Hearings by Parties: While the child is in the legal custody of the Tribal Court, any party may request in writing that a review hearing be held. The request must include the reason(s) why the Tribal Court should hold a hearing and the Court may grant or deny the request.
- C. Purpose of Review Hearings: The purpose of review hearings is to determine whether the child should continue to remain a ward of the Court, or if any conditions of the legal or physical custody should be modified or added. After making a decision based upon the child's best interests, the Court shall state any new decisions made in review hearings in a new Order.
- D. Procedure for Review Hearings: The Court shall follow the same procedure for Review Hearings as it does for Temporary Custody hearings as set forth above in Section 10(A)-(E).

Section 16. Interference with a Custody Order

Anyone who interferes with a Court ordered placement of a child shall be subject to an appropriate penalty by the Kenaitze Tribal Court and/or all applicable Tribal, State and Federal law.

CHAPTER 3
VOLUNTARY RELINQUISHMENT AND
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Section 1. Cases Where Parental Rights May be Terminated

Parental rights may be terminated in whole or in part in any case involving custody of a child, child protection, where a parent voluntarily consents to relinquish their parental rights, or in the case of an adoption.

Section 2. Findings Necessary for Termination of Parental Rights

The Court may terminate parental rights to a child only if it finds by clear and convincing evidence that:

1. If the parental rights are not terminated, the continued legal and/or physical custody of the child by the parent is likely to result in serious emotional or physical damage to the child; or
2. The child has been subjected by his or her parent(s) to sexual abuse; or
3. The child has been abandoned.

Section 3. Procedure for Involuntary Termination of Parental Rights

A. Petition: Persons or entities may file a Petition to use the Tribal Court form requesting that parental rights of a person to that child be terminated. The Petition shall contain the name, address and age of the child; the names and addresses of parents, any custodians of the child, and any other person or tribe with an interest in the child; the reason why the Petitioner believes that parental rights should be terminated; and any available written evidence to support termination of parental rights.

1. **Good Faith Requirement.** A person must have good faith in filing a Petition for Termination of Parental Rights and must state with specificity why he or she believes there is good cause to terminate parental rights. No person shall use the Tribal Court's involuntary termination procedures as a vehicle for retaliation against a parent. In addition, a person may not file a Petition to terminate his or her own rights solely for the purpose of excusing his or her financial responsibilities to a child.

2. **Fine.** If the Court finds that a person grossly misused this procedure, it may order the Petitioner to pay a fine not to exceed \$100.

B. Notice of Petition: The parent(s) against whom the Petition is filed shall immediately be served with a copy of the Petition. If possible, the parent shall be served with the petition by certified mail or by in-person delivery.

C. Hearing

1. Notice of Hearing: The Court shall schedule a hearing and provide a Notice of Hearing to the parties at least 30 days prior to the hearing. Notice shall be served by certified mail, restricted delivery or by personal delivery. If the Court is unable to serve the Notice of Hearing in person or by mail, the Court shall publish the Notice of Hearing in the local newspaper of the town where the parent was last known to reside. When giving notice by publication, the publication shall appear one time per week for at least four weeks. The hearing can be held no sooner than 30 days after the date of the last publication.
2. Procedure: The following procedure shall be followed during a termination of parental rights hearing:
 - a. Failure to Appear in Court: After reasonable notification has been given, the Court may proceed with the hearing even if parents, custodians, and/or guardians fail to appear in Court.
 - b. Evidence: The parties have the right to present all evidence, written or otherwise, that is relevant to the issue of terminating their parental rights.
 - c. Witnesses: The parent(s), custodian, and/or guardian shall have the right to call their own witnesses and to question witnesses called by any other party. Judges may question all witnesses.
 - d. Advisors/Attorneys: The parents or custodians of the child have the right to have an Elder or other traditional advisor with them at the hearing. (See Kenaitze Tribal Court Code, Chapter 2, Section 23). The parents or custodians of the child also have the right to bring attorneys or other counsel with them to the hearing. The hiring and

payment of counsel shall be the sole responsibility of the parent. (Please refer to Kenaitze Tribal Court Code, Chapter 2, Section 24 for further laws regarding Attorneys and Other Counsel).

- D. Decision of the Court: If, after reviewing the Petition and scheduling and holding a hearing in accordance with the procedures set forth above, the Court finds by clear and convincing evidence the conditions necessary to terminate the parental rights exist, it shall issue an Order terminating parental rights in whole or in part depending on what is in the best interest of the child. If the Court finds that the conditions necessary to terminate parental rights do not exist, it shall dismiss the petition to terminate parental rights.

Section 4. Procedure for Voluntary Relinquishment of Parental Rights

- A. Requirements for a Valid Consent. Any parent may voluntarily relinquish his or her parental rights to any minor child. However, no voluntary consent will be valid unless:
1. The consent is given more than ten (10) days after the birth of the child;
 2. The consent is given in the presence of the Tribal Court and on the record, except that in some circumstances the Court may accept a relinquishment of parental rights telephonically; and
 3. In all cases, the parent(s) is fully informed of his or her rights as described in Section B, below, and the consequences of relinquishment on the Court record and he or she states on the record that they understand those rights and consequences.

- B. Parental Rights in Voluntary Relinquishment Proceedings. In all cases involving the voluntary relinquishment of parental rights, the Court shall inform the parent that they have the following rights:
1. The right to be provided with an interpreter to explain the voluntary consent and its consequences;
 2. The right to withdraw the voluntary consent. A voluntary consent to the termination of parental rights may be withdrawn anytime within 10 days of giving voluntary consent. After 10 days, withdrawal may only be done with the Court's permission. The Court shall give permission only if it finds that it is in the best interest of the child, as stated in Chapter 1, Section 4 of this Code.

Section 5. Effect of Relinquishment or Termination of Parental Rights.

- A. In General. If a parent's rights are terminated, they no longer have any right to the child or any responsibility for that child and parental rights are completely severed, unless otherwise provided by the Court's Order. If the Court provides for anything less than completely terminated parental rights, the Court shall be very specific. For example, the Court may specifically allow parental participation in specific tribal ceremonies in relation to the child.
- B. Right to Inheritance. Nothing in this Chapter shall terminate the child's right to inheritance from their biological parent(s).
- C. Extended Family. Termination of parental rights shall not affect the child's relation to or relationship with their biological extended family members, unless the Court finds that it is in the child's best interest to do otherwise and specifies that in its Order.

- D. Tribal Membership Status. Termination of parental rights shall not affect the child's tribal membership status, nor the child's rights or privileges as an Alaska Native whether written or unwritten, nor shall it effect the jurisdiction of the Kenaitze Tribal Court over the child.
- E. Waiver of Notice of Adoption Hearings: Parents who voluntarily relinquish their parental rights or whose parental rights are terminated shall be deemed to have waived their right to notice of any adoption hearings involving the child, unless otherwise ordered by the Court.

CHAPTER 4
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Section 1. Beginning a Case

Any person over the age of 18 years old, who desires to adopt a child may request that the Kenaitze Tribal Court consider the matter by filing a Petition to use the Tribal Court. The Court shall consider what is in the best interest of the child in all cases, but shall hold the general policy that children of our Tribe be adopted by Tribal members of the Kenaitze Tribe or of another Tribe.

- A. Non-Tribal Member Petitioners: If a non-Tribal member is petitioning to adopt a child that is a member of the Tribe or eligible for membership in the

Tribe, the Court shall seek the Council's approval prior to proceeding with the adoption case.

Section 2. Contents of Adoption Petition

The Petition to use the Tribal Court shall provide the following information:

1. The name, address and age of the person to be adopted;
2. The names and addresses, if known, of the person's biological parents and any custodians of the person;
3. A statement of which tribe(s) the person to be adopted is a member or with which tribe(s) the person to be adopted is eligible for membership. If the person to be adopted is a minor child, this statement should include facts that indicate that the Kenaitze Tribe is the tribe with the most significant contacts with the child;
4. The names and addresses of any other person or Tribe with an interest in the adoption proceeding or in the person to be adopted;
5. Whether the Petitioner has reason to believe that the biological parents of the person to be adopted oppose the adoption and/or if the biological parents right have been terminated or voluntary relinquished;
6. If the person to be adopted is a minor child, the facts which make the petitioner believe that it is in the best interest of the child that an adoption Order be issued by the Court;
7. Whether the child has any property and if so, what that property is;

8. Any relationship between the Petitioner(s) and the child;
9. Where the Petitioner(s) was born and his/her present age and occupation.

Section 3. Homestudy

The Court may order a homestudy completed for the proposed adoptive home. The Petitioner(s) may be required to pay costs involved in the homestudy. The homestudy shall include an evaluation of the home for all of the factors for determining the best interest of the child and anything else the Court requires. If the Court has appointed a guardian *ad litem* or CASA to look after the best interest of the child, the homestudy shall state what recommendation the guardian *ad litem* or CASA makes regarding the granting of the Adoption Order.

Section 4. Adoption Hearing

- A. Notice: Upon receiving a Petition for adoption, the Court shall provide all parties, including the biological parents, with a copy of the Petition. Biological parents need not be notified if their parental rights have been terminated by this Court or another Court or if the parents have voluntarily relinquished their rights to the children.
- B. Hearing: The Court shall hold an adoption hearing no sooner than 10 days after the Petition is filed and notice is given as stated above in Section 4(A). The Court shall issue a Notice to appear in tribal court to all parties no less than seven days prior to the hearing.

- C. Failure to Appear in Court: After notification has been given, the Court may proceed with the hearing even if parents, custodians, and/or guardians fail to appear in Court.

- D. Witnesses: At the adoption hearing, the parent(s), custodian, and/or guardian shall have the right to call their own witnesses and to question witnesses called by any other party. Judges may question all witnesses.

- E. Advisors/Attorneys: The parents or custodians of the child have the right to have an Elder or other traditional advisor with them at the adoption hearing. (See Kenaitze Tribal Court Code, Chapter 2, Section 23). The parents or custodians of the child also have the right to bring attorneys or other counsel with them to the hearing. The hiring and payment of counsel shall be the sole responsibility of the parent. (Please refer to Kenaitze Tribal Court Code, Chapter 2, Section 24 for further laws regarding Attorneys and Other Counsel).

Section 5. Adoption Order

After notice and hearing according to the procedures set forth in Section 4, above, the Court may issue an adoption Order.

The Court shall award the adoption Order if it finds the following things:

1. The biological parents have consented to the adoption or they have had their parental rights terminated in Tribal Court or the Court of any other jurisdiction or the biological parents are unavailable to consent to the adoption; and

2. If the person to be adopted is a minor child, the Court finds that it is in the child's best interest as defined in Chapter 1, Section 4 of this Code, to be adopted by the Petitioner(s).

Section 6. Effect of Adoption Orders

- A. Parent/Child Relationship: The Kenaitze Tribal Court adoption Order creates the relationship of parent and child between the Petitioner(s) and the adopted person, including the right to inherit.
- B. Right to Inheritance: Nothing in this Chapter shall terminate the child's right to inheritance from their biological parent(s).
- C. Tribal Membership Status: Termination of parental rights shall not affect the child's tribal membership status, nor the child's rights or privileges as an Alaska Native whether written or unwritten, nor shall it affect the jurisdiction of the Kenaitze Tribal Court over the child.
- D. Visitation: The Court may require that persons with whom the child has emotional or blood ties shall have visitation with the child. However, even if the Court does not enter such an order, a child's relation to or relationship with their extended family is not severed by the adoption, unless the Court finds it in the best interest of the child to sever such relationships. Specific information concerning such visitation shall be incorporated into the Adoption Order.

Section 7. Cultural Adoptions. The Tribal Council shall retain the power to do Cultural Adoptions as it sees fit and as defined by Tribal law and custom.

CHAPTER 5
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Section 1. Beginning a Child Custody Case

If there is a dispute between parents and/or custodians over custody of a child, the matter may be brought in front of the Kenaitze Tribal Court. A child custody case shall be started by filing a Petition to use the Tribal Court.

Section 2. Contents of Child Custody Petition

The Petition shall provide the following information:

1. The name, address and age of the child;
2. The names and addresses of the child's parents and any custodians of the child;
3. The names and addresses of any other person or tribe with a specific interest in the child;
4. A statement of which tribe(s) the child is a member or with which tribe(s) the child is eligible for membership. This statement should include facts that indicate that the Kenaitze Tribe is the tribe with the most significant contacts with the child.
5. The reason the Petitioner is requesting custody of the child; and
6. The facts that make the Petitioner believe that the best interest of the child require that a custody Order be issued by the Court.

Section 3. Temporary Custody Hearing and Order

- A. Temporary Custody Hearing: After the Court determines that it has jurisdiction to hear and decide the case, the Court may hold a temporary custody hearing in cases where it will take considerable time to hold a full custody hearing. Before holding the temporary custody hearing, the Court shall issue a Notice to Appear in Tribal Court to the parent(s), custodian, or guardian of the child, no less than seven days before the hearing.
- B. Temporary Custody Order: At the temporary custody hearing, all parties shall have an opportunity to present evidence and question witnesses. After the hearing is completed, the Court may issue a temporary custody Order

giving a particular person or persons temporary physical custody of the child until a full custody hearing is held.

- C. Equal Access When not Harmful to Child: Unless it is shown to be harmful to the child, the child shall have reasonable equal access to both parents and/or custodians during the duration of the temporary custody Order. The temporary custody Order may also set out a reasonable visitation schedule for a person or persons.
- D. Information Gathering: The Court may direct a designated person to investigate the facts contained in a Petition.

Section 4. Custody Hearing

- A. Custody Hearing Within 30 Days: After a temporary custody Order is issued by the Court, the Court shall set a custody hearing within 30 days of the temporary custody hearing, or as soon as is reasonable and agreeable to the Parties in the case.
- B. Purpose of the Custody Hearing: The purpose of the custody hearing is to make a decision about who should have custody of the child, and what visitation, if any, should be awarded for those persons who do not have custody.
- C. Witnesses: At the hearing, all parties shall have the opportunity to present evidence and question witnesses.
- D. Advisors/Attorneys: The parents or custodians of the child have the right to have an Elder or other traditional advisor with them at a custody hearing. (See Kenaitze Tribal Court Code, Chapter 2, Section 23). The parents or custodians of the child also have the right to bring attorneys or other counsel

with them to the hearing. The hiring and payment of counsel shall be the sole responsibility of the parent. (Please refer to Kenaitze Tribal Court Code, Chapter 2, Section 24 for further laws regarding Attorneys and Other Counsel).

- E. Deciding Custody and Visitation: After the hearing is completed, the Court shall make a decision as to who shall have custody and what, if any, visitation should be awarded. In making this decision, the Court shall consider all factors defining the best interest of the child in Chapter 1, Section 4 of this Code. The best interest of the child shall be considered above all else.

Section 5. Custody Order

- A. Court Orders: After the custody hearing, the Court may Order that:
1. A party or parties be given legal and physical custody of a child; or
 2. That a party not given physical custody be given specified visitation with the child; or
 3. That a party not be given custody of a child.
- B. Child Support Orders: The Court may also order a parent to pay child support to the child's custodian, and may take into account the parent's ability to contribute in cash, in goods or in kind, and also the child's needs.
- C. Other Orders: The Court may order one or both parent/custodian to complete various tasks as is necessary to protect the best interest of the child. Such orders may include, but are not limited to, alcohol and drug

treatment, mental health evaluation/counseling, parenting classes, anger management and/or domestic violence intervention.

Section 6. Change of Custody Order

Any person may request that an award of custody of a child or visitation with a child be modified by filing a Petition to use the Tribal Court. It is up to the discretion of the Court to hold a hearing to consider the request in the Petition. If the Court decides to hold a hearing based on the Petition, reasonable notice shall be provided to all parties, and any new decisions of the Court shall be made through a new custody Order.

CHAPTER 6
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Section 1. Definitions

“**Domestic Violence**” means assault, threats of violence, or physical, sexual, or mental abuse of a person when the victim is a spouse, a former spouse, an extended family member, a boyfriend or girlfriend, or any other person who has been an intimate partner, a member of the social unit made up of those living together in the same dwelling as the victim or perpetrator, or a caretaker.

“Petitioner” shall be the person who actually files a petition to the tribal court requesting a Protection Order.

“Respondent” shall be the perpetrator of domestic violence.

“Parties” shall be the Petitioner, the victim if other than the Petitioner, and the Respondent.

“Stalking” is when a person engages in more than one act of non-consensual contact with a victim and such contact places that person in fear of death or physical injury or in fear of death or physical injury of a family member. “Contact” could include, but is not limited to, following a person, approaching a person in public, going to a person’s place of employment, telephoning a person and sending mail or electronic communication to a person.

Section 2. Cooperative Enforcement of Protective Orders

In accordance with the full faith and credit provision of the Violence Against Women Act, 18 U.S.C. 2265, the Kenaitze Tribal Court shall recognize protective orders issued by the State of Alaska, another state or another tribal government.

Section 3. Beginning a Case

A person who has been subjected to domestic violence as defined in Section 1 of this Chapter, or any person who has knowledge of domestic violence committed against a person who is unable or unwilling to petition the Court, may request a domestic violence protection order from the Tribal Court. The person shall make the request by filing a Petition to use the Tribal Court form. The person who files such a petition shall be called the “Petitioner.”

Section 4. Contents of the Petition to Use the Tribal Court

In domestic violence cases, the Petition to Use the Tribal Court shall contain the following information:

1. The name, address and age of the person to be protected;
2. The names and addresses, if known, of the person's custodians, if any;
3. The names and addresses of any other person or tribe with an interest in the domestic violence proceeding;
4. Whether the Petitioner is the victim or whether some other person is the victim, and if so, the Petitioner's relationship to the person to be protected;
5. The facts that make it necessary for the person to be protected; and
6. The relief requested by the Petitioner, including whether the Petitioner is requesting a temporary protective order, a long term protective order, or both.

Section 5. Emergency Hearing for Temporary Protective Orders

- A. Hearing without Notice to Respondent. In emergency circumstances, the Court may hold an emergency hearing to consider issuing a temporary protective order. The Court may grant a temporary protective order without written or oral notice to the Respondent if the Court finds that the Petitioner, or victim if other than the Petitioner, has been subjected to domestic violence and that the Respondent poses an immediate threat to the health, safety, or welfare of the victim or a member of his or her household.
- B. Service of Temporary Orders. If the Court enters a temporary protective order and the Respondent was not present at the emergency hearing, the Court shall immediately serve the

Respondent with a copy of the Petition and a copy of the Temporary Protective Order.

- C. Duration of Temporary Orders. A Temporary Protective Order shall remain in effect for 20 days after it is issued unless dissolved earlier by the Court. If the Court receives a request to dissolve a Temporary Protective Order, it must follow the procedures set forth in Section 8, below.
- D. Request for Long Term Protective Order. A Petitioner may request that the Court enter a long term protective order, either in his/her original Petition or during an emergency hearing. If a long term protective order is requested, the Court shall follow the procedures set forth in Section 6, below.

Section 6. Hearing for Long Term Protective Orders

- A. When the Court May Hold a Long Term Protective Hearing. The Court may hold a long term protective order hearing even if an emergency hearing was not requested or if a temporary protective order was denied. In these cases, a hearing shall be held within 20 days of filing the Petition. If a temporary protective order was entered, a long term protective order hearing shall be held within 20 days of granting the temporary order.
- B. Notice. The Court shall provide notice to the Parties at least 10 days prior to a long term protective order hearing. The hearing may proceed regardless of whether the Respondent participates.
- C. Court Decision. The Court may enter a long term protective order if the Court finds by a preponderance of evidence that the Respondent has committed an act involving domestic violence against a victim. A long term protective order shall be in effect for up to one year from the date of the hearing, unless the Court determines that for safety reasons it is in the best

interest of the victim and/or the Tribe to grant the protective order for a longer period including up to life of the person/s being protected.

- D. Service of Long Term Protective Orders. If the Court enters a long term protective order and the Respondent was not present at the hearing, the Court shall immediately serve the Respondent with a copy of the Petition and a copy of the long term protective order.

- E. Extension of Long Term Protective Orders. The long term protective order may be extended for up to one year upon request of the Petitioner or victim if other than the Petitioner, and after another hearing is held indicating that it is necessary to extend the order to protect the victim or a person residing with the victim. Notification of such a hearing shall be given to the parties at least 20 days in advance of the hearing.

Section 7. Contents of Protective Orders

At either an emergency hearing for a temporary protective order or at a hearing for a long term protective order, the Court may include any of the following provisions in its Order:

1. Banishment of the Respondent from the Tribe's Territory;
2. That the Respondent be restrained from threatening to commit or committing domestic violence, stalking or harassment;
3. That the Respondent move out of the home of the victim, regardless of the ownership of the residence;
4. That the Respondent not communicate directly or indirectly with the victim (this may include no telephone calls, letters, or in-person contact, depending upon the Court's Order);

5. That the Respondent stay away from the petitioner's home, school, place of employment, children's daycare and any other place frequented by the petitioner or members of the petitioner's household;
6. That the Respondent stay a specified distance from the petitioner, as determined by the Court;
7. That the respondent not enter any propelled vehicle in the possession of or occupied by the petitioner;
8. That a peace officer accompany the victim to the victim's residence to obtain property or children if the victim has custody of the children;
9. An award of temporary custody of the minor child(ren), with a possible visitation provision with a minor child if the safety of the child and the victim can be protected;
8. If visitation is allowed, the Court may order visitation under specific conditions;
9. That the victim have possession and use of vehicles and other essential personal items, regardless of ownership of the items;
10. That a Respondent pay support to a victim or for a minor child in the care of the victim if the Respondent has a legal obligation to support the child;
11. That the Respondent pay medical or other expenses of the victim that resulted from domestic violence perpetrated by the Respondent;
12. That the Respondent engage in personal or family counseling; substance-abuse counseling or treatment, or a program for the rehabilitation of perpetrators of domestic violence, or a combination of these;
13. That the Respondent be prohibited from consuming alcohol, illegal drugs, and/or controlled substances that have not been properly prescribed;
14. That the Respondent not follow the petitioner in any motorized vehicle.

Section 8. Dissolving or Modifying Temporary or Long Term Protective Orders

If any of the parties wish to dismiss or change an existing temporary or long term protective order in any way, he or she must file a Petition to use the Tribal Court specifically requesting the change. The Tribal Court shall then schedule a hearing only if the Court finds that the request has merit. If the Court chooses to hold a hearing to consider the dissolution or modification, it shall do so within 3 days for temporary protective orders and within 20 days for a long term protective order, with reasonable notice to the parties.

Section 9. Violation of a Protective Order

If the Respondent violates any part of a temporary or long term protective order, he or she shall be charged with contempt of court and be subject to appropriate penalties available to the Court.

Section 10. Rights of Victims of Domestic Violence

A victim of domestic violence is entitled to but not limited to the right to:

1. Be informed of all hearing dates;
2. Be present at all hearings of the Tribal Court on the matter, either in person or telephonically;
3. Advise the Court on conditions required to ensure his or her safety; and
4. Receive restitution for losses sustained as the direct result of the domestic violence

Section 11. Domestic Violence Cases Generally Open to the Public/Exceptions

Generally, domestic violence protective cases will be open to the public. The Court may make a case confidential if necessary to protect the safety or identity of a victim.

CHAPTER 7
MARRIAGES

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Section 1. Definition

It is the written and unwritten tradition of the Kenaitze Indian Tribe that marriage is a union between a man and a woman.

Section 2. Tribal Policy

It is the policy of the Kenaitze Tribe to uphold the validity of marriages whenever possible. The Tribal Court shall recognize the validity of any marriage performed under the law of the jurisdiction where it was performed, unless such marriage is inconsistent with the traditional definition of marriage as set forth above in Section 1.

Section 3. Procedure for Tribal Marriages

Persons wishing to be married by the Kenaitze Tribal Court shall file a Petition to Use the Tribal Court. Marriages performed by the Kenaitze Tribal Court are subject to the following requirements:

- A. Both parties must be at least 18 years of age, or provide evidence of written consent by their parents or legal guardians. If there are two parents or legal guardians, both must consent if their child is under the age of 18.

- B. A filing fee of \$50 shall be paid to the Kenaitze Tribal Court, or the Court may waive the fee upon a finding that both parties are destitute.

- C. Both parties must attest that they are not currently married.

- D. Marriages conducted by the Kenaitze Tribal Court are a privilege and not a right. The Court shall have discretion to decline to perform a marriage for any reason, including if the Tribal Court finds that the marriage is inconsistent with the customary laws and/or traditions of the Kenaitze Tribe.

- E. Following the marriage, the Court shall issue a marriage license.

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Section 1. Divorces

Divorce proceedings shall begin with a filing of a Petition to use the Tribal Court. The Court may hear the case or dismiss a Petition where it finds that it lacks necessary personal or subject matter jurisdiction, or where it finds that the action is otherwise inconsistent with Kenaitze Tribal law and custom. The Court shall have the option to issue any Order that it finds appropriate, including, but not limited to the following:

- A. Where the Court finds that it has jurisdiction to dissolve a marriage, but lacks jurisdiction to adjudicate property rights, it may issue such an Order and proceed accordingly.

- B. Where the Court finds that as a matter of comity to another jurisdiction, it should refrain from ruling on all or a part of the requested relief in a Petition for divorce, it may issue an Order setting forth its decision, and proceed accordingly.

Section 2. Annulments

Persons wishing to have a marriage annulled may bring the matter before the Tribal Court by filing a Petition to use the Tribal Court. A marriage performed by the Tribal Court may be annulled where the Tribal Court finds any of the following grounds:

- A. The marriage was the result of fraud or duress.
- B. One of the parties was of unsound mind at the time of the marriage.
- C. There was failure to consummate the marriage.
- D. The marriage violated any applicable written law or any unwritten customary law and/or tradition of the Kenaitze Tribe.

CHAPTER 9
NAME CHANGES

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Section 1. Order of Name Change

The Kenaitze Tribal Court shall have authority to issue an Order changing the legal name of a party or the child of a party. Persons wishing a name change shall begin the proceeding by filing a Petition to use the Tribal Court. It is up to the discretion of the Court to proceed with the name change or not. The Court may charge a fee for the Petitioner to use the Court for name change purposes, and for costs associated with filing the name change with the Alaska Division of Vital Statistics.

Chapter 10

Protection for the Elders and Vulnerable Adults of the Kenaitze Indian Tribe

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Section 1. Policy, Purpose, and Enforcement

- A. **Policy:** It is the traditional way of the Kenaitze Indian Tribe to honor and respect the Tribal Elders. The Elders of the Kenaitze Tribe are valuable resources as they are our custodians of tribal history, culture and tradition. Thus, it is in the best interest of, and serves the welfare of the Kenaitze Tribe to protect tribal Elders. It is also in the best interest of the Tribe to protect vulnerable tribal members.
- B. **Purpose:** The purpose of this Chapter is to protect Elders and vulnerable adults within the jurisdiction of the Kenaitze Tribe from abuse as defined in this Ordinance. This Ordinance shall be liberally interpreted in order to achieve its purpose. This Ordinance provides for:
1. Reporting abuse or neglect to the Tribal Court;
 2. Receiving reports of and investigating suspected abuse or neglect; and
 3. Delivering emergency and non-emergency protective services to Elders and other vulnerable adults.
- C. **Enforcement:** The Kenaitze Tribal Court shall be the primary enforcer of this law, provided that the Kenaitze Tribal Court may enter into agreements with other courts of competent jurisdiction for enforcement when circumstances warrant such cooperation.

Section 2. Application of this Chapter

This Chapter is civil in nature. This Chapter applies to Tribal Elders and to any adult tribal members of the Kenaitze Tribe should circumstances as defined by this Chapter warrant. Any section or portion thereof containing the word “Elder” shall be liberally construed to include and mean or other “vulnerable adult” as defined by Section 3 of this Chapter.

Section 3. Definitions

In this Chapter the following words shall have these meanings:

“**Abuse**” is intentional or negligent infliction of bodily injury, sexual abuse, emotional abuse, unauthorized and/or improper use of funds, property or other resources of an Elder, neglect, unreasonable confinement, intimidation or cruel punishment of an Elder resulting in physical harm or pain or mental anguish by any person, including anyone who has a special relationship with the Elder such as a spouse, a child, or other relative recognized by the Tribal Council as a caretaker. Abuse is also interfering with delivery of necessary services and resources, failing to report abuse or neglect of an Elder by any person, and failing to provide services or resources essential to the Elder’s practice of his/her customs, traditions, or religion.

“**Caretaker**” is a person who is required by tribal law, custom or state law to provide services or resources to an elder; a person who has voluntarily undertaken to provide care or resources to an elder; an institution or agency which voluntarily provides or is required by tribal law, custom or state/federal law to provide services or resources to an elder, including the duty to follow-up on placements, and any such institutions or agency which receives anything of value in return for providing services or

resources. Caretakers also include employees of the institutions or agencies.

“Elder” is a member or spouse of a member of the Kenaitze Tribe who is 55 years or older.

“Incapacity” is the current inability or functional inability of a person to sufficiently understand, make, and communicate responsible decisions about himself as a result of mental illness, mental deficiency, physical illness or disability, chronic use of drugs or liquor, use of prescription medication and/or illegal drugs and to understand the consequences of any such decision. Incapacity may vary in degree and duration and shall not be determined solely on the basis of age.

“Protective Placement” is the placement of an Elder in a hospital, nursing home, residential care facility, or with a different family or person, or transfer of the Elder from one such institution to another with the Elder’s consent or appropriate legal authority.

“Protective Services” are services provided to an Elder with the Elder’s consent or with appropriate legal authority and include, but are not limited to, social case work, psychiatric and health evaluation, home care, day care, legal assistance, social services, health care, case management, guardianship, conservatorship, and other services consistent with this Ordinance. It does not include protective placement.

“Reporter” is someone who notifies the Kenaitze Tribal Court of a suspected abuse of an Elder or vulnerable adult.

“Retaliation” is threatening a reporter of Elder abuse or the reporter’s family in any way, causing bodily harm to the reporter or the reporter’s

family, causing the reporter or any of the reporter's family to be reprimanded by an employer, terminated from a job, suspended from general assistance, or damaging the reporter's or the reporter's family's real or personal property in any way.

“Vulnerable adults” are those persons over 18 who are mentally or physically incapacitated by physical conditions or by drug or alcohol induced conditions.

Section 4. Duty to Report Abuse of an Elder

Failure to report cases of suspected abuse or neglect of an Elder or vulnerable adult is a violation against the Kenaitze Tribe and subject to fine under Section 6 of this Ordinance. The following people are required to report cases of suspected abuse or neglect of an Elder to the Kenaitze Tribal Court. This duty shall apply 24 hours per day 7 days per week.

1. The Elder's family or caretaker;
2. Any tribal employee, including the Tribal Administrator;
3. Any tribal appointed or elected official;
4. Any employee of a tribally owned business, even if not managed by the Tribe;
5. Any medical doctor or dentist, nurse, physicians' assistant, human services worker, or Elder service provider;
6. Any person or agency or employee of such agency with a fiduciary duty to the Elder such as a lawyer, accountant, financial institution, property manager, or conservator;
7. Any person who has good reason to suspect that an Elder had been or is being abused or neglected; or
8. Volunteers of the Kenaitze Indian Tribe.

Section 5. Immunity for Reporting and Confidentiality

A person who in good faith reports suspected abuse or neglect of an Elder is immune from any civil or criminal suit based on that person's report. The name of a reporter who reports abuse as required by this Chapter is confidential and shall not be released to any person unless the reporter consents to the release because it would be necessary to protect the Elder. No evidentiary privilege except for the attorney-client privilege may be raised as a justifiable defense or reason for failing to report suspected Elder abuse or for testifying as required by this Chapter.

Section 6. Failure to Report, False Reports, and Penalty for Retaliation

A. Failure to Report. Any person who is required by this Chapter to report suspected Elder abuse and fails to do so is subject to a fine of up to \$500.00 if found guilty by the Kenaitze Tribal Court. The tribal court shall assess this penalty only after petition, notice, and opportunity for hearing, and a determination that the person has a mandated duty to report, had good reason to suspect elder abuse or neglect, and failed to report as required. The Court shall follow procedures for notice and hearing as set forth in the Kenaitze Court Code at Chapter 2, Sections 15 and 16.

B. False Reports. Any person who makes a report of suspected Elder abuse knowing it to be false is subject to a fine of up to \$500.00 if found guilty by the Kenaitze Tribal Court, and in addition, any of the sentencing options that the Court has at its discretion in the Kenaitze Court Code, Chapter 2, Section 18. As set forth in the Kenaitze Court Code, Chapter 2, Sections 17, such cases may also be referred to the tribe's Traditional Conflict Resolution Program if appropriate. The tribal court shall assess a penalty or impose a sentence only after petition, notice, and opportunity for hearing, and a determination that the

person made a report knowing it to be false. The Court shall follow procedures for notice and hearing as set forth in the Kenaitze Court Code at Chapter 2, Sections 15 and 16.

C. Retaliation. If a person retaliates for the reporting of a suspected case of Elder abuse, the Kenaitze Tribal Court may utilize the full range of sentencing options at its discretion. A sentence shall be imposed only after a petition, notice, and opportunity for hearing, and a determination that the person engaged in such retaliation. The Court shall follow procedures for notice and hearing as set forth in the Kenaitze Court Code at Chapter 2, Sections 15 and 16.

Section 7. Procedures for Reporting, Investigation, Petition, Notice and Hearing

A. Reporting. Reports of suspected elder abuse shall be made to the Program Director or other designated person of the Tyotkas Elders Program. The Elders Program shall be responsible for assigning an investigator or requesting the Court's appointment for an investigator.

B. Investigation: The person assigned to investigate the elder abuse shall investigate the report of harm within 24 hours or one working day and shall immediately prepare a report.

1. Investigators: Persons who shall be permitted to investigate elder abuse shall be any of the following: a qualified investigator through the tribal Elders Program, a qualified investigator through the tribal Family Services Program, or a qualified investigator appointed by the Kenaitze Tribal Court.

2. Guidelines for Investigation: An investigator that is appointed shall exercise cultural competence and awareness in completing

the investigation into elder abuse. The Elders Program and/or the Family Services program have the authority to establish guidelines for investigations into the abuse of elders. If such guidelines are established, they shall be adhered to in reporting to the court. If no such guidelines have been established, the investigator shall consider, at a minimum, the following: the position of the elder and his/her family members and caretaker; reports or statements from agencies or institutions that have information regarding the elder's circumstances; reports of medical providers; any other reports of abuse or neglect that have been made; and the elder's living conditions. The investigator shall make reasonable efforts to meet in person with the elder, his/her family, caretaker, and all other persons with relevant information. If the investigator is unable to meet in person with any of these people, he/she shall document in the report why in-person contact was not possible.

3. Contents of Investigator's Report. The investigators report shall include at least the following information:

- a. The Elder's name, address or location, telephone number;
- b. The name, address or location, telephone number of the person(s) who is suspected of abusing the Elder;
- c. The nature and degree of incapacity of the Elder;
- d. The name, address or location, telephone number of witnesses;
- e. The name, address or location, telephone number of the Elder's caretaker;
- f. A description of the acts which are complained of as abusive; and
- g. Any other information that the investigators believe might be helpful in establishing whether abuse has occurred.

4. Completion of Investigation. Upon completion, the investigator shall submit his or her report to the Director of the Tyotkas Elder's Program. Upon review of the investigator's report, the Director shall decide whether there is sufficient evidence to require legal action. If the Director determines that there is sufficient evidence to require legal action, it shall refer the matter to the Tribal Court by filing a Petition to Use the Tribal Court. A copy of the investigator's report shall be provided with a copy of the petition.

5. Records of Investigations. Any investigation report filed shall remain on file and not be destroyed for a period of seven years, even if it is determined that there is not sufficient evidence to pursue legal action. However, if the investigating agency determines that the report was made in bad faith, it shall be destroyed immediately after the investigation is completed if the evidence is insufficient to show abuse or neglect.

C. Petition and Hearing. If a Petition is filed following an investigation of elder abuse, it shall be the role of the tribal court to determine if Elder abuse has occurred. The determination shall be made only after a petition of suspected abuse has been filed, an investigation has taken place, notice of a hearing is given to all parties, a hearing is held, and the Court finds proof that is clear and convincing.

1. Procedures: Notice and hearing procedures shall be as outlined in the Kenaitze Court Code at Chapter 2, Sections 15 and 16.

2. Services to the Elder: If the Court finds the elder has been abused, it may provide service as outlined in Section 8, below.

3. Consequences for Perpetrator: If the Court has found a person to have committed elder abuse pursuant to this section, it has the following options available to it:

- a. Referral to Traditional Conflict Resolution Program: The court may, at any point during the case involving elder abuse, refer the matter to the tribe's Traditional Conflict Resolution Program as set forth in the Kenaitze Court Code at Chapter 2, Section 17.
- b. Options for Sentencing: If the Court determines that a person had committed elder abuse, it may impose any of the sentencing options set forth in the Kenaitze Court Code at Chapter 2, Section 18.

Section 8. Elder Protective Services and Placements

A. Voluntary Placements and Protective Services: Protective services or placements may be provided on a voluntary basis by the Kenaitze Tribal Court when requested by any abused elder and the Court finds the elder to be in need of services. To request voluntary services, the Elder can file a Petition for Voluntary Protective Services. The Court shall act on such petitions within 10 days. These services or placements shall be provided in the manner least restrictive to the elder's liberty and rights and consistent with the elder's welfare and needs. Such services and placements shall be provided, subject to available funding and resources, and only as determined necessary by the Kenaitze Tribal Court.

1. Duration of Services: Voluntary services shall be provided to the Elder for no more than 30 days at a time. At the end of each period, the tribe shall reassess the elder's needs before agreeing to continue providing services and placement. Voluntary placement shall not be continued without a court order if the elder has been in placement for more than 90 days.

B. Involuntary Protective Placement and Services: Upon an Order of the Kenaitze Tribal Court, involuntary protective services or placement shall be provided to any Elder who is incapacitated or who is abused. These services or

placements shall be provided in the manner least restrictive to the Elder's liberty and rights and consistent with the Elder's welfare and needs. Involuntary placement or services shall be made only on an emergency basis (see procedures in Emergencies in Section 9, below).

C. Funding of Protective Placements and Services: Protective services or protective placements, whether made on a voluntary or involuntary basis, shall be provided subject to available funding and resources and only as determined necessary by the Kenaitze Tribal Court. The Elder, and where appropriate the Elder's family, if able to do so, shall pay for all or part of the costs of services or placement provided to them.

D. Plan for Delivery of Services to Elders: The Elder's Program and/or tribal social services provider shall develop a plan for the delivery of protective services to elders. In addition, a process for conducting a comprehensive physical, mental, and social evaluation of the elder shall be established.

Section 9. Emergencies

A. Emergency Action: The Court shall issue an emergency protection order authorizing protective services or protective placement on an emergency basis upon receiving clear and convincing evidence that an Elder:

1. is at risk of immediate physical harm,
2. is incapacitated and cannot consent to protective services, or
3. an emergency exists

B. Petition: Any person who believes that that Elder is at risk may seek an emergency protective order by filing a Petition. The petition shall contain the name, address, location, and interest of the petitioner; the name, address, location and condition of the Elder; the nature of the emergency; the nature of the

Elder's incapacity; the proposed protective services, and where applicable, protective placement; the attempts, if any to secure the Elder's consent to services; any other facts the petitioner believes will assist the court.

C. Orders: The Tribal Court's Emergency Order shall contain the following information:

1. Services: The Order shall specifically state: 1) the emergency services to be provided to the Elder which may include, if necessary, protective placement; 2) what agency or person shall provide the services; and 3) any other information relevant to the existing emergency.

2. Hearing date: The emergency protective order shall also specify when a hearing will be held. As set forth below in subsection E, this hearing must be held no later than 72 hours after the issuance of the emergency protective order.

3. Duration: The emergency protection order shall be issued for a maximum of 20 days. It may be renewed one time for a maximum of 20 days provided that the evidence shows that the emergency is continuing.

D. Notice: The copy of the Emergency Order and a copy of the Petition must immediately be provided to the Elder, the Elder's family and the Elder's caretaker. If possible, the notice shall be provided prior to implementing the protective services.

E. Hearing: The tribal court shall hold a hearing on a Petition to provide protective services or placement to an elder within 72 hours after the Emergency Order is issued. The Elder, the Elder's Family and the Elder's caretaker shall be provided at least 24 hours advance notice of the hearing. The Elder, the Elder's Family and the Elder's caretaker shall be provided an opportunity to be heard at

the hearing and to ask questions of the investigator or other persons that are alleging that the Elder is in need of services. If the Court finds that there is clear and convincing evidence that the Elder is in need of protective services, it may continue the Emergency Order for up to 20 days. If the Court does not find such evidence exists, then it shall dismiss the Emergency Order.

F. Forcible entry: The Kenaitze Tribal Court may authorize a forcible entry to enforce the emergency protection order after attempts to gain voluntary access to the Elder have failed.

G. Risk of Irreparable or Immediate Harm: If there is good cause to believe that an emergency exists and that an Elder is at risk of immediate or irreparable harm and, based on personal observation, an investigator and/or law enforcement officer believes that the Elder will be irreparably harmed during the time an emergency protective order is secured, the investigator and/or law enforcement officer shall immediately protect the Elder including, where necessary, transporting the Elder for medical treatment or to an appropriate facility. Immediately after the Elder is protected, a petition for an emergency order shall be filed and the procedures for securing such an order shall be followed.

Section 10. Rights of Elders, Their Families and Caretakers

Elders and family of Elders have the following rights:

1. An Elder, the Elder's family, and caretakers shall be informed about an elder abuse investigation before it begins unless an emergency exists.
2. An Elder may refuse to accept elder protection services (even if there is good cause to believe that the elder has been or is being abused),

provided that he/she is able to care for him/herself and/or has the capacity to understand the nature of the services offered.

3. The Elder's family or caretaker may refuse for themselves, but not for the Elder, elder protection services offered pursuant to this Code.

4. An Elder, the Elder's family, or caretaker may refuse to allow an investigator into their home. In this situation, the investigator may seek a warrant for forcible entry before entering the home.

5. The Elder, Elder's family and caretaker have the right to notice of hearings and the right to attend any proceeding pertaining to the determination of the Elder's situation. The Elder shall be present at the hearings unless the Tribal Court determines that the Elder's health would be at risk.

6. The Elder, Elder's family and caretaker have the right, at their own expense, to seek an independent medical, psychological, or psychiatric evaluation of the Elder. These records shall be released to the Kenaitze Tribal Court if the Elder or caretaker wants the Court to consider such evaluations.

7. Whenever it appears that an investigation may lead to criminal charges being filed under the State's criminal statute, the investigator shall inform the elder's family and caretaker of their rights as allowed by the Indian Civil Rights Act.