

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS  
OF SAN BERNARDINO COUNTY, CALIFORNIA  
AND RECORD OF ACTION**

June 21, 2005

**FROM:** GARY PENROD, Sheriff-Coroner  
Sheriff's Department

**SUBJECT:** INTERGOVERNMENTAL AGREEMENT WITH THE CHEMEHUEVI INDIAN  
TRIBE

**RECOMMENDATION:**

1. Approve Intergovernmental **Agreement No. 05-617** with the Chemehuevi Indian Tribe that establishes agreed upon procedures for the Sheriff's Department to enforce domestic violence emergency protective orders and to accompany the Tribe's Department of Social Services (DSS) caseworkers to preserve the peace during child abuse investigations and/or removal of a child from a custodial parent.
2. Authorize Sheriff to sign the Intergovernmental Agreement on behalf of the County.

**BACKGROUND INFORMATION:** The Chemehuevi Indian Tribe is a federally-recognized Indian Tribe, whose Reservation occupies approximately 32,000 acres of land along the shores of Lake Havasu and the Colorado River in San Bernardino County. The Sheriff has the authority to enforce State criminal laws on the Reservation. In addition to State law, the Chemehuevi Tribal Court enacts ordinances, which provide Tribal laws.

Since the Tribe does not have its own police force, Tribal officials contacted the Sheriff's Department to establish agreed upon procedures for enforcement of the Chemehuevi Tribal Court's Domestic Violence Emergency Protective Orders, and to best preserve the peace when Tribal DSS caseworkers are investigating alleged child abuse and/or removal of a child from a custodial parent, in conformity with the Tribe's Indian Child Welfare Ordinance. The Sheriff believes it is in the best interests of both Tribal members and County residents that domestic violence and child abuse issues on the Reservation are handled effectively, and has been working with Tribal officials to draft an agreement to address this need.

The Tribal Court has enacted a Domestic Violence Prevention Ordinance, which enables the Tribal Court to issue emergency protective orders to provide for the separation of persons involved in alleged domestic violence until the matter is resolved. Under the proposed agreement, mutually agreeable procedures would be put into place for the Sheriff to enforce such orders properly issued by the Tribal Court, as required by 18 U.S. Code sections 2265 and 2266 and California Family Code sections 6401 and 6403.

Page 1 of 2

cc: Sheriff-Casey w/ agree  
Contactor c/o Dept w/ agree  
IDS w/ agree  
Auditor-Valdez w/ agree  
Risk Management  
County Counsel-Tilton  
CAO-Rozko  
Sheriff-Penrod  
File w/ agree

jrh

Record of Action of the Board of Supervisors  
Agreement No. 05-617

**DEFERRED/ APPROVE BOARD OF SUPERVISORS  
COUNTY OF SAN BERNARDINO**

MOTION	<del>MOVE</del>	AYE	AYE	<u>AYE</u>	<u>SECOND</u>
	1	2	3	4	5

DENA SMITH, INTERIM CLERK OF THE BOARD

BY

DATED: June 21, 2005

ITEM 098



FOR COUNTY USE ONLY

County of San Bernardino

F A S

CONTRACT TRANSMITTAL

<input checked="" type="checkbox"/> New	Vendor Code		<b>SC</b>	Dept. <b>SHR</b>	Contract Number <b>A</b>
<input type="checkbox"/> Change					<b>05-617</b>
<input type="checkbox"/> Cancel					
County Department <b>Sheriff's Department</b>			Dept. <b>SHR</b>	Orgn. <b>SHR</b>	Contractor's License No.
County Department Contract Representative <b>Dennis J. Casey, Captain</b>			Telephone <b>387-0640</b>		Total Contract Amount <b>0.00</b>
Contract Type <input type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input checked="" type="checkbox"/> Other: Operations Agreement					
If not encumbered or revenue contract type, provide reason:					
Commodity Code		Contract Start Date <b>06/21/05</b>	Contract End Date <b>Open-ended</b>	Original Amount	Amendment Amount
Fund <b>AAA</b>	Dept. <b>SHR</b>	Organization <b>SHR</b>	Appr.	Obj/Rev Source	GRC/PROJ/JOB No. Amount <b>0.00</b>
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No. Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No. Amount
Project Name <b>Intergovernmental Agreement for enforcement of Tribal Ordinances</b>			Estimated Payment Total by Fiscal Year		
			FY	Amount	I/D

CONTRACTOR Chemehuevi Indian Tribe

Federal ID No. or Social Security No. \_\_\_\_\_

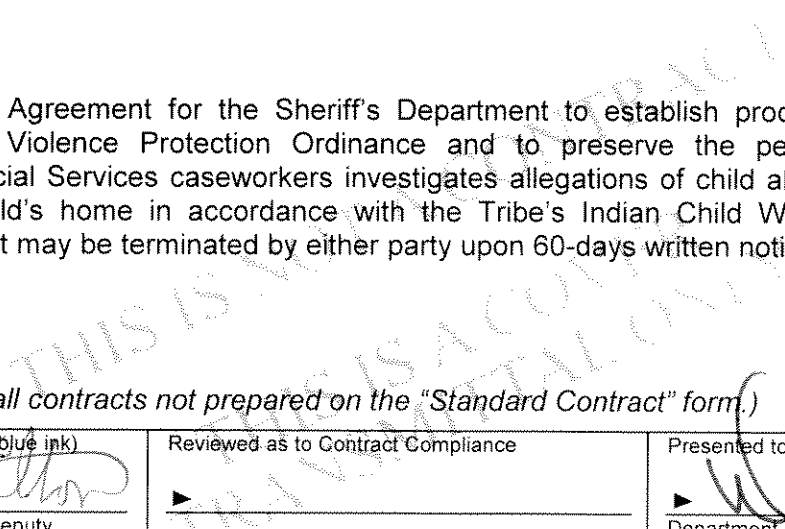
Contractor's Representative \_\_\_\_\_

Address 1990 Palo Verde Road, Lake Havasu, CA 92363

Phone (760) 858-4219

Nature of Contract: *(Briefly describe the general terms of the contract)*

Intergovernmental Agreement for the Sheriff's Department to establish procedures to enforce the Tribe's Domestic Violence Protection Ordinance and to preserve the peace while the Tribe's Department of Social Services caseworkers investigates allegations of child abuse and/or removes a child from the child's home in accordance with the Tribe's Indian Child Welfare Ordinance. This ongoing agreement may be terminated by either party upon 60-days written notice.



*(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)*

Approved as to Legal Form (sign in blue ink)  County Counsel, Dennis S. Tilton, Deputy Date <u>6-3-05</u>	Reviewed as to Contract Compliance  Date _____	Presented to BOS for Signature  Department Head Date <u>6/14/05</u>
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Auditor/Controller-Recorder Use Only

<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keyed By

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE CHEMEHUEVI INDIAN TRIBE AND THE SAN  
BERNARDINO COUNTY SHERIFF'S DEPARTMENT**

This Agreement is entered into on this 21<sup>st</sup> day of June, 2005, by and between the Chemehuevi Indian Tribe ("Tribe"), a federally recognized Indian Tribe, whose principal place of business is located at 1990 Palo Verde Drive, Havasu Lake, California 92363, and the San Bernardino County Sheriff's Department ("Department"), with its principal place of business located at 655 E. 3<sup>rd</sup> Street, San Bernardino, California 92415. The Tribe and the Department shall be collectively referred to in this Agreement as the "Parties."

**RECITALS**

The Parties have entered into this Agreement in light of the following facts:

1. The Tribe is a federally recognized Indian Tribe organized under a written Constitution, pursuant to the Indian Reorganization Act, 25 U.S.C. §476, with the Chemehuevi Tribal Council ("Council") as the governing body of the Tribe; and
2. The Tribe is the beneficial owner of the Chemehuevi Indian Reservation ("Reservation"), which comprises approximately 32,000 acres of land located along the shores of Lake Havasu and the Colorado River in San Bernardino County, California. Title to the Tribe's Reservation trust lands is owned by the United States of America in trust for the Tribe; and
3. Pursuant to the authority granted to it under the Tribe's Constitution, the Tribal Council has enacted a Tribal Court Ordinance, pursuant to which the Tribe established a Tribal Court ("Tribal Court"). Pursuant to the same authority, the Tribe has also enacted a Domestic Violence Prevention Ordinance, which granted to the Chemehuevi Tribal Court the authority to issue emergency protective orders, to provide for the separation of persons involved in alleged domestic violence for a period sufficient to enable those persons to seek a resolution to the causes of the violence, and permanent protective orders to prevent domestic violence among those

individuals who are unable to resolve their differences.

4. Pursuant to the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, Cal. Family Code § 6400 *et seq.*, the Department must accord full faith and credit to a domestic violence protection order issued by the Tribal Court.

5. Pursuant to Public Law 280, 18 U.S.C. §1662(a), the State of California has the authority and the obligation to enforce the State's criminal prohibitory laws on the Reservation.

6. The Department has the authority to enforce the State's criminal prohibitory laws in the County of San Bernardino, and, because the Tribe's Reservation is located entirely within the County of San Bernardino, the Department has the authority and obligation to enforce the State's criminal prohibitory laws on the Reservation; and

7. The Parties acknowledge that domestic violence is a serious issue in San Bernardino County that must be addressed as effectively and as comprehensively as possible.

8. The Parties acknowledge that it is in the best interests of the Parties, the residents of the Reservation, and the residents of the County of San Bernardino ("County") to prevent domestic violence on the Reservation; and

9. The Parties agree that, in order to do so, it would be helpful to the Parties to have the Department enforce the duly issued domestic violence emergency protective orders of the Tribal Court; and

10. The Parties agree that, in order to do so, it is in the best interests of the Parties to use this Intergovernmental Agreement to establish procedures for the notification of the Department of the issuance and service of domestic violence emergency protective orders issued by the Tribal Court; and

11. In addition, the Parties acknowledge that the protection of children by the child protection agencies of the State of California and the Tribe is of the highest priority; and

12. The Parties further acknowledge that it is in the best interests of the Parties, the residents of the Reservation, and the residents of the County of San Bernardino to ensure that investigations of child abuse and the removal of children from their custodial parents based on abusive behavior in the home are carried out effectively and without endangering the children involved, the employees of the Social Services Department of the Tribe, and the County or anyone else; and

13. The Parties acknowledge that, in order for the Tribe's Department of Social Services ("DSS") to carry out its duties set forth under the Tribe's Indian Child Welfare Ordinance, it is important that the personnel of the DSS have available to them civil backup and support from law enforcement officials where the DSS is carrying out an investigation or removal of a child and the DSS officer has reason to believe that, in doing so, the DSS officer may be faced with a hostile or dangerous situation; and

14. The Parties agree that, in order to do so, it is in the best interests of the Parties to create procedures that allow the DSS to request from the Department civil support of investigations or removals (by a sheriff's deputy accompanying a DSS official);

15. The Parties further agree that it is in the best interests of both Parties that Tribe indemnify, defend, and hold harmless the County of San Bernardino, the Department, and their authorized officers, employees, agents, and volunteers, including sheriff's deputies and reserve sheriff's deputies, from any and all claims, actions, losses, damages, and/or liability arising out of the performance of obligations under this Agreement in the course and scope of a civil standby.

16. The Parties agree that it is in the best interests of both parties that the Tribe agrees to waive its sovereign immunity only to the extent necessary to enforce this Agreement; and

17. The Parties agree that the most effective method of creating the above-described procedures is to enter into this Intergovernmental Services Agreement.

## AGREEMENT

In consideration of the above-recited facts, and the mutual promises contained herein, the Parties hereby agree as follows:

1. Agreement to Enforce Tribal Court Domestic Violence Emergency Protective Orders. The Department agrees that, upon receipt of any domestic violence emergency protective order properly issued by the Tribal Court, pursuant to the procedure set forth in paragraph 2 below, the Department shall enforce the order.
2. Procedure for Enforcing Tribal Court Domestic Violence Emergency Protective Orders. The Parties will utilize the following procedures for enforcing Tribal Court domestic violence emergency protective orders:
  - A. Notification of Department of Those Authorized to Issue Domestic Violence Emergency Protective Orders. The Tribe shall inform the Department of the identity of the Tribal Court judge(s) who has/have the authority to issue domestic violence emergency protective orders pursuant to the Tribe's current Domestic Violence Prevention Ordinance, a copy of which is attached hereto as Exhibit A, and incorporated herein by this reference. The Tribe shall also inform the Department when the Tribal Court judge leaves office, and inform the Department of the identify of the judge appointed to replace the preceding judge, within 10 days of the appointment of the new judge.
  - B. Notification of Amendments to Ordinance and Forms. The Tribe shall inform the Department of any modifications to the Tribe's Domestic Violence Prevention Ordinance or any of the Court's forms relating to the enforcement of that Ordinance. The Tribal Court's current Domestic Violence Prevention Ordinance enforcement forms are attached hereto as Exhibit B, and incorporated herein by this reference.
  - C. Notice to Department of Issuance of Order. Within one business day of the

issuance of a temporary or permanent domestic violence emergency protective order by the Tribal Court, and on the same day if possible, the Tribal Court Clerk shall fax a copy of the domestic violence emergency protective order to the Department at its Colorado River Station in Needles.

D. Notice to Department of the Filing of a Proof of Service with the Tribal Court. Within one business day of the filing of a proof of service of a domestic violence emergency protective order with the Tribal Court, and on the same day if possible, the Tribal Court Clerk shall fax a copy of the proof of service to the Department at its Colorado River Station in Needles. The Court form of the proof of service shall include a section showing the date and time that the proof of service is faxed to the Department, which shall be completed by the Court Clerk at the time that the proof of service is faxed to the Department.

E. Forwarding of Order and Proof of Service. Within one business day of receipt of a domestic violence emergency protective order or proof of service from the Tribal Court, and on the same day if possible, the Department will forward the order or proof of service to its Dispatch Division. All orders transmitted to the Department shall also be entered by Colorado River Station clerks into the California Law Enforcement Telecommunications System (“CLETS”).

F. Obligations of Sheriff’s Deputies—Special Circumstances. Where a domestic violence emergency protective order has been issued, but not yet served, if a sheriff’s deputy of the Department is called to the Reservation based on a domestic violence-related complaint involving the parties listed in the order, the person who is protected by the order shall give the order to the responding deputy, who shall then serve the order on the party to be restrained, order the party subject to the domestic violence

emergency protective order to comply with the requirements of the order, and take any other action deemed necessary to enforce the order. Where a sheriff's deputy of the Department serves a domestic violence emergency protective order, the deputy shall complete the proof of service and file it with the Tribal Court as soon as possible, but in any event within 2 working days from the date of service.

G. Reports Prepared by Sheriff's Deputies in Enforcing a Domestic Violence Emergency Protective Order. Whenever a sheriff's deputy of the Department responds to a request to enforce a domestic violence emergency protective order issued by the Tribal Court, and the deputy prepares a written report related to that call for service, the Department shall file the report with the Tribal Court under seal. If any of the parties to a proceeding that is based on the enforcement of the domestic violence emergency protective order files a request with the Tribal Court that the report be admitted into evidence, the judge of the Tribal Court shall hold an *in camera* inspection of the report to determine whether the report is admissible and relevant to the issues before the Tribal Court. If the judge determines that the report is admissible and relevant, the judge will permit the parties in the proceeding to review the report, but order that the information in the report be kept confidential. Any breach of the confidentiality order shall constitute contempt of court and will subject the party violating the order to a monetary penalty of up to \$1,000.00. The judge of the Tribal Court shall promulgate rules of procedure or issue any general orders necessary to carry out the provisions of this subsection.

H. Testimony of Sheriff's Deputies Responding to Request for Assistance. A sheriff's deputy who responds to a request for assistance relating to the enforcement of a domestic violence emergency protective order issued by the Tribal Court may be subpoenaed to testify as to the events that took place during the course of the deputy's



response to the request for assistance. Any such deputy will only be required to appear and testify if the hearing or trial at which the testimony is to be given is scheduled at a time when the deputy is available and after required fees have been paid. Any party subpoenaing a deputy to testify in Tribal Court pursuant to this subsection shall be required, at the time of service of the subpoena, to pay any fees required under California law for the appearance of a law enforcement officer at a civil state court hearing.

3. Agreement to Provide Support for Enforcement of Child Removal Orders. The Department agrees that, upon receipt of a request from the Tribe's Department of Social Services, in the absence of higher-priority law-enforcement tasks (e.g., armed robbery in progress or a hostage-taking incident) the Department shall dispatch a deputy to the Reservation to provide civil standby assistance to preserve the peace in the investigation of a report of child abuse and/or the removal of a child from the child's home pursuant to the Tribe's Indian Child Welfare Ordinance.

4. Procedure for Enforcing Tribal Court Child Removal Orders. The Parties will utilize the following procedures for enforcing a child removal order issued by the Tribal Court:

A. Notification of Department of Those Authorized to Issue Emergency Protective Orders Related to Possible Child Abuse. The Tribe shall inform the Department of the name(s) of the Tribe's DSS caseworker(s) who is/are authorized to investigate reports of child abuse and to carry out child removals pursuant to the Tribe's current Indian Child Welfare Ordinance. A copy of the Tribe's Indian Child Welfare Ordinance is attached hereto as Exhibit C, and incorporated herein by this reference.

B. Notification of Amendments to Ordinance and Forms. The Tribe shall inform the Department of any modifications to the Indian Child Welfare Ordinance or of any of the Court's forms relating to the enforcement of the Indian Child Welfare Ordinance. The Tribal Court's current Indian Child Welfare enforcement forms are

attached hereto as Exhibit D, and incorporated herein by this reference.

C. Provision of Reports Under Seal. The Department shall, upon request, provide to the Tribal Court, with respect to any child that is the subject of a child dependency proceeding in Tribal Court, any reports in its possession on juveniles who are under investigation or subject to dependency proceedings in State Court, subject to the approval of the San Bernardino County Superior Court sitting as a Juvenile Court. The reports shall be maintained by the Tribal Court under seal. If any of the parties to a proceeding based on the removal of a child from the child's home files a request with the Tribal Court that the report be admitted into evidence, the judge of the Tribal Court shall hold an *in camera* inspection of the report to determine whether all or portions of the report are admissible and relevant to the issues before the Tribal Court. If the judge determines that the report is admissible and relevant, the judge will permit the parties to review all or portions of the report, but order that all of the information in the report be kept confidential. Any breach of the confidentiality order constitutes contempt of court and will subject the party violating the order to a monetary penalty of up to \$1,000.00. The judge of the Tribal Court shall promulgate rules of procedure and issue any general orders necessary to carry out the provisions of this subsection.

5. Indemnification. The Tribe agrees to indemnify, defend with legal counsel acceptable to the County, and hold harmless the County of San Bernardino, the Department, and their authorized officers, employees, agents, and volunteers, including sheriff's deputies and reserve sheriff's deputies, from any and all claims, actions, losses, damages, and/or liability arising out of the performance of obligations under this Agreement in the course and scope of a civil standby.

6. Enforcement of Agreement. To enforce the provisions of this Agreement, either

party may bring an action in federal district court after providing a 30-day written notice of an opportunity to cure any alleged breach of this Agreement. In the event a federal district court determines that it lacks jurisdiction over such an action, the action may be brought by the County against the Tribe in the San Bernardino County Superior Court and/or by the Tribe against the County in the San Bernardino County Superior Court. In the event the San Bernardino County Superior Court determines that it lacks jurisdiction over such an action, the action may be brought by the County against the Tribe in the Chemehuevi Tribal Court and/or by the Tribe against the County in the Chemehuevi Tribal Court. The Parties expressly waive any exhaustion of administrative remedies or any immunity from suit that either party possesses for purposes of bringing an action under this Agreement, including limited sovereign immunity by the Tribe only to the extent necessary to enforce this Agreement.

7. Liability Insurance. During the term of this Agreement the County shall at all times remain self-insured and the Tribe shall maintain and keep in effect a policy of liability insurance in an amount no less than five million dollars (\$5,000,000.00) per occurrence. Written proof of such insurance shall be provided by the Tribe to the County once each calendar year, and written proof of self-insurance shall be provided by the County to the Tribe once each calendar year. Notwithstanding any other provisions in this Agreement to the contrary, nothing in this Agreement shall require either party to waive its immunity from suit or sovereignty except to enforce this Agreement, and then, only in favor of the other party.

8. Notices. Any notices, requests, demands, or other communications required or permitted hereunder shall be sufficient if made in writing as set out in Section 12 and: (a) delivered personally or (b) sent by certified mail, postage prepaid, return receipt requested and addressed to the appropriate party at its address set forth in Section 12, or such other addresses as a party may specify to the other in a notice given pursuant to this Section; or (c) by facsimile

transmission to the facsimile number in Section 12, with an original to follow by First Class mail. Notice shall not be considered effective until received and read by a representative of a party to this Agreement.

9. Construction. To the extent state law applies, this Agreement shall be governed in accordance with the laws of the State of California. The descriptive headings of the sections of this Agreement are for convenience only and are not to be used in the construction of the contents of this Agreement. This Agreement may be executed in multiple counterparts, each of which will be an original instrument, but all of which will constitute one agreement.

10. Term. This Agreement shall become effective on date last executed below and shall remain in full force and effect until it is terminated upon sixty (60) days written notice by either party to the other in that party's sole discretion or until it is superseded by another written agreement between the parties covering the same subject matter.

11. Amendment or Modification. This Agreement may be amended or modified in writing by the further agreement and signing of both parties hereto.

12. Notice. Unless notified in writing otherwise the parties shall use the following addresses, phone numbers, and facsimile numbers to provide notification under this Agreement:

**Department of Social Services, Chemehuevi Indian Tribe**

Address: 1970 Palo Verde Drive

Havasu Lake, CA 92363

Telephone Number: 760-858-5426

Facsimile Number: 760-326-9211

**Chemehuevi Tribal Court**

Address: 1990 Palo Verde Drive

Havasu Lake, California 92363

Telephone Number: 760-858-4219

Facsimile Number: 760-858-5120

**San Bernardino County Sheriff's Department, Colorado River Station**

Address: 1111 Bailey Avenue

Needles, CA 92363

Telephone Number: 760-326-9200

Facsimile Number: 760-326-9211

13. Authorization. Chairman Charles Wood has been authorized by an appropriate resolution of the Chemehuevi Tribal Council to execute this Agreement pursuant to Article VI, Section 2(a) and (b) of the Tribe's Constitution, which authorizes the Tribal Council to enter into agreements with local governments to promote the health and general welfare of the Tribe. The Department warrants that Gary Penrod, the Sheriff of San Bernardino County, has been authorized, by appropriate action of the San Bernardino County Board of Supervisors, to execute this Agreement on behalf of the Department.


Executed and delivered as of the date first written above in San Bernardino County, California.

**CHEMEHUEVI INDIAN TRIBE**

DATE: June 21, 2005

By: Charles Wood  
CHARLES WOOD, Chairman

ATTESTED:



RONALD ESCOBAR, Secretary-Treasurer

**SAN BERNARDINO COUNTY  
SHERIFF'S DEPARTMENT**

DATE: 6-21-05

By: [Signature]  
Gary S. Penrod, Sheriff

**SAN BERNARDINO COUNTY  
BOARD OF SUPERVISORS**

DATE: 6-21-05

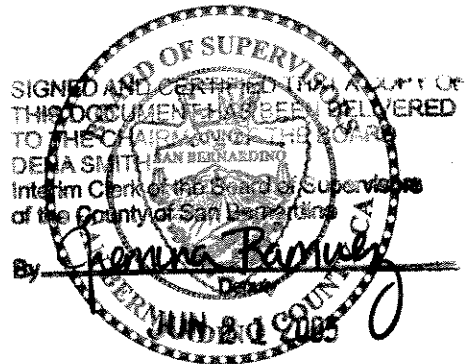
By: [Signature]  
Bill Postmus, Chairman

APPROVED AS TO FORM:

[Signature]  
Lester J. Marston, Tribal Attorney

RONALD D. REITZ  
County Counsel

[Signature]  
Dennis Tilton  
Deputy County Counsel  
Sheriff's Legal Counsel



# **EXHIBITS**

ORDINANCE NO. 02- \_\_\_\_\_

**AN ORDINANCE OF THE TRIBAL COUNCIL OF THE  
CHEMEHUEVI INDIAN TRIBE GRANTING THE  
CHEMEHUEVI TRIBAL COURT THE JURISDICTION  
AND AUTHORITY TO ISSUE ORDERS RESTRAINING  
DOMESTIC VIOLENCE**

The Tribal Council ("Council") of the Chemehuevi Indian Tribe ("Tribe") does hereby ordain as follows:

Section 1. Findings and Declarations. The Council for the Tribe finds and declares that:

1. The Tribe is a federally recognized Indian Tribe organized under a written Constitution, pursuant to the Indian Reorganization Act, 25 U.S.C. §476, with the Council as the governing body of the Tribe.
2. Article IV, Section 2 of the Tribe's Constitution grants the Council the authority to enact ordinances for the general welfare of the Tribe and to establish a tribal judicial system. Pursuant to this authority, the Council is adopting this Ordinance.
3. There have been times in the past and there will undoubtedly be times in the future when violence occurs between spouses, parents and children, and other individuals who cohabitate and live on the Reservation.
4. The purpose of this Ordinance is to prevent the reoccurrence of acts of violence and sexual abuse between family members and domestic partners by granting to the Chemehuevi Tribal Court the authority to issue emergency protective orders to provide for the separation of the persons involved in the domestic violence for a period sufficient to enable those persons to seek a resolution to the causes of the violence and permanent protective orders to prevent domestic violence among those individuals who are unable to resolve their differences.
5. The adoption of this Ordinance would promote the public health and safety by preventing violence, particularly violence against children on the Reservation. The adoption of this Ordinance is, therefore, in the best interests of the Tribe and its members.

Section 2. Adoption of New Chapters 2, 3, 4, and 5 to Title 8 of the Chemehuevi Tribal Code, entitled "Domestic Violence Prevention Act." Four new Chapters 2, 3, 4 and 5 shall be added to Title 8 of the Chemehuevi Tribal Code, entitled "Domestic Violence Prevention; General Provisions and Emergency Orders; Duties of Law Enforcement Officers; Protective Orders and Other Domestic Violence Prevention Orders, and Registration and Enforcement of



Orders” respectively which are hereby adopted and shall provide as follows:

## DOMESTIC VIOLENCE PREVENTION

### Chapter 2

#### Sections:

8.02.010	Definitions.
8.02.020	Tribal Court Jurisdiction.
8.02.030	Petition or Response; Filing Fee; Waiver of Service Fee; Forms.
8.02.040	Statement on Face of Order; Expiration Date and Notice.
8.02.050	Explicit Statement of Address Not Required.
8.02.060	Forms and Instructions; Promulgation by Chief Judge.
8.02.070	Grounds for Issuance.
8.02.080	Findings of Court.
8.02.090	Inclusion of Other Orders.
8.02.100	Contents of Orders.
8.02.110	Availability of Orders; Effect of Vacation of Household.
8.02.120	Issuance of Orders Without Prejudice; Expiration of Orders.

Section 8.02.010 Definitions. As used in Chapters 2, 3, 4 and 5 of this Title 8, the following definitions shall have the following meanings:

- (a) “Abuse” means intentionally or recklessly to cause or to attempt to cause bodily injury or sexual assault or to place a person in reasonable apprehension of eminent bodily injury to that person or to another;
- (b) “Cohabitant” means a person who regularly resides in the household; “Former Cohabitant” means a person who formerly regularly resided in the household.
- (c) “Domestic Violence” means any abuse mental or physical perpetrated against any of the following persons: (1) a spouse or former spouse; (2) a cohabitant or former cohabitant; (3) the person with whom the respondent is having or has had a dating or engagement relationship; (4) a person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent; (5) a child of a party or a child who is the subject of a child custody action pending before any court of competent jurisdiction, where the presumption applies that the male parent is the father of the child to be protected; and (6) any other person related by consanguinity or affinity to the second degree.
- (d) “Emergency Protective Order” means an Order issued under this Chapter 2.

- (e) “Judge” means the Chief Judge or any associate Judge of the Chemehuevi Tribal Court or any Judge, Commissioner, Referee, or Tribal Court Clerk designated by the Chief Judge to act as a Judge to issue Emergency Protective Orders under this Chapter 2.
- (f) “Law Enforcement Officer” means one of the following officers who requests or enforces an Emergency Protective Order or Protective Order under Chapters 2, 3, 4, or 5 of this Title 8: (1) a police officer or law enforcement official of the Chemehuevi Indian Tribe authorized by the Chemehuevi Tribal Court to carry out and enforce the provisions of this Chapter; (2) a Bureau of Indian Affairs Police Officer or Special Officer; and (3) any Peace Officer of the State of California including, but not limited to, any police officer, sheriff, deputy sheriff, California Highway Patrol Officer or California State Police.
- (g) “Protective Order” or “Order” means an order that includes any of the following restraining orders, whether issued ex parte, after notice and hearing or in a judgment: (1) an order enjoining specific acts of abuse; (2) an order excluding a person from a dwelling; and (3) an order enjoining other specified behavior.
- (h) “Reservation” means all lands within the exterior boundaries of the Chemehuevi Indian Reservation and any land owned by the United States of America in trust for the Chemehuevi Indian Tribe.
- (i) “Tribe” means the Chemehuevi Indian Tribe, its officers, agents and employees.

Section 8.02.020 Tribal Court Jurisdiction. The Chemehuevi Tribal Court is hereby granted the jurisdiction and authority to carry out the provisions of Chapters 2, 3, 4, and 5 of this Title 8 of the Tribal Code and to do all things necessary to issue Emergency Protective Orders, Protective Orders and to restrain and enjoin domestic violence. The Chief Judge of the Tribal Court shall designate at least one Judge, Commissioner, Referee or the Tribal Court Clerk to be reasonably available to issue orally, by telephone or otherwise, Emergency Protective Orders at all times when the Chief Judge is not available whether or not the Court is in session.

Section 8.02.030 Petition or Response; Filing Fee; Waiver of Service Fee; Forms. There is no filing fee for a petition, response, or modification of an Emergency Protective Order or Protective Order filed in a proceeding brought pursuant to Chapters 2, 3, 4 or 5 of this Title 8. Fees otherwise payable by a petitioner to any Tribal law enforcement officer for serving an order issued under this Title may be waived in any case in which the petitioner has requested a fee waiver on the initiating petition and has filed a declaration that demonstrates, to the satisfaction of the Judge, the financial need of the petitioner for the fee waiver. The declaration required by this Section shall be on a form developed and approved by the Chief Judge for that purpose. In conjunction with a hearing pursuant to this Title, the Court may make an order for the waiver of fees otherwise payable by the petitioner to a Law Enforcement Officer for serving an Order

issued under this Title.

Section 8.02.040 Statement on Face of Order; Expiration Date and Notice. An order issued under this Chapter shall state on its face the date of expiration of the order and the following statements in substantially the following form: "This order is effective when made. (Name of officer(s)) Law Enforcement Officers shall enforce it immediately on receipt. It is enforceable anywhere on the Reservation by any Law Enforcement Officer that has received the order or is shown a copy of the order. If proof of service on the restrained person has not been received, the Law Enforcement Officer shall advised the restrained person of the terms of the order and then shall enforce it."

Section 8.02.050 Explicit Statement of Address Not Required. A petition for an order described in this Chapter is valid and the order is enforceable without explicitly stating the address of the petitioner or the petitioner's place of residence, school, employment, the place where the petitioner's child is provided child care services, or the child's school.

Section 8.02.060 Forms and Instructions; Promulgation by Chief Judge. The Chief Judge shall prescribe the form of the orders and any other documents required by this Chapter and shall promulgate forms and instructions for applying for orders described in this Chapter.

Section 8.02.070 Grounds for Issuance. A Judge may issue an ex parte Emergency Protective Order where a Law Enforcement Officer asserts reasonable grounds to believe either or both of the following: (1) that a person is in immediate and present danger of domestic violence, based on the person's allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought; and (2) that a child is in immediate and present danger of abuse by a family or household member, based on an allegation of a recent incident of abuse or threat of abuse by the family or household member.

Section 8.02.080 Findings of Judge. An Emergency Protective Order may be issued only if the Judge finds both of the following: (1) that reasonable grounds have been asserted to believe that an immediate and present danger of domestic violence exists or that a child is in immediate and present danger of abuse; and (2) that an Emergency Protective Order is necessary to prevent the occurrence or recurrence of domestic violence or child abuse.

Section 8.02.090 Inclusion of Other Orders. An Emergency Protective Order may include any of the following specific orders, as appropriate: (1) A Protective Order, as defined in Section 8.02.010 this Chapter; (2) An order determining the temporary care and control of any minor child of the endangered person and the person against whom the order is sought; and (3) an order placing the care and control of the endangered child and any other minor children in the family or household with the parent or guardian of the endangered child who is not a restrained party.

Section 8.02.100 Contents of Orders. An Emergency Protective Order shall include all

of the following:

- (1) a statement of the grounds asserted for the order;
- (2) the date and time the order expires;
- (3) an allegation that the endangered person resides on the Reservation, and
- (4) the following statements:

(a) "To the Protected Person: This order will last only until the date and time noted above. If you wish to seek continuing protection, you will have to apply for a Protective Order from the Court. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that the attorney may assist you in making your application."

(b) "To the Restrained Person: This order will last until the date and time noted above. The protected party may, however, obtain a more permanent restraining or Protective Order from the Court. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that the attorney may assist you in responding to the application."

(5) In the case of an endangered child, the following statement: "This order will last only until the date and time noted above. You may apply for a more permanent restraining or Protective Order from the Court. You may seek the advice of an attorney in connection with the application for a more permanent restraining or Protective Order."

Section 8.02.110 Availability of Orders; Effect of Vacation of Household. The fact that the endangered person has left the household to avoid abuse does not affect the availability of an Emergency Protective Order.

Section 8.02.120 Issuance of Orders Without Prejudice; Expiration of Orders. An Emergency Protective Order shall be issued without prejudice to any person. An Emergency Protective Order expires at the earlier of the following times: (1) midnight on the seventh day following the day of its issuance or (2) if the seventh calendar day following the day of its issuance falls on a Saturday or Sunday, then at midnight on the following Monday.

### Chapter 3

## DUTIES OF LAW ENFORCEMENT OFFICER

### Sections:

- 8.03.010 Reduction of Orders to Writing.
- 8.03.020 Duties of Officer Who Requested Order.

- 8.03.030 Enforcement of Orders; Liability of Officers Enforcing Orders.
- 8.03.040 Officer Required to Carry Copies of Order.

Section 8.03.010 Reduction of Orders to Writing. A Law Enforcement Officer who requests an Emergency Protective Order shall reduce the request to writing and sign it.

Section 8.03.020 Duties of Officers who Request Order. A Law Enforcement Officer who requests an Emergency Protective Order shall do all of the following: (1) serve the order on the restrained person, if the restrained person can reasonably be located; (2) give a copy of the order to the protected person or, if the protected person is a minor child, to the parent or guardian of the endangered child, who is not a restrained person, if the parent or guardian can reasonably be located, or to a person having temporary custody of the endangered child; and (3) file a copy of a proof of service of the order on the restrained person with the Court as soon as practical after issuance and service if the restrained person can reasonably be located.

Section 8.03.030 Enforcement of Orders; Liability of Officers Enforcing Orders. A Law Enforcement Officer shall use every reasonable means to enforce an Emergency Protective Order. A Law Enforcement Officer who acts in good faith to enforce an Emergency Protective Order is not civilly or criminally liable and is an officer of the Tribe who enjoys the Tribe's immunity from suit.

Section 8.03.040 Officer Required to Carry Copies of Orders. A Law Enforcement Officer who requests an Emergency Protective Order shall carry copies of the order while on duty.

## Chapter 4

### PROTECTIVE ORDERS AND OTHER DOMESTIC VIOLENCE PREVENTION ORDERS

#### Sections:

- 8.04.010 Issuance of Order Upon Affidavit.
- 8.04.020 Persons Who May Be Granted Order.
- 8.04.030 Form of Notice on Order.
- 8.04.040 Support Persons for Victims of Domestic Violence; Powers and Duties; Discretion of Court.
- 8.04.050 Protective Orders; Court to Inform Parties of Terms of Orders.
- 8.04.060 Mutual Orders; Personal Appearance of Parties; Evidence.
- 8.04.070 Ex Parte Order Enjoining Contact.
- 8.04.080 Ex Parte Order Excluding Party from Dwelling.
- 8.04.090 Ex Parte Order Enjoining Specific Behavior.
- 8.04.100 Issuance or Denial on Date Application Submitted.

- 8.04.110 Issuance of Orders; Child Support; Restitution; Counseling; Attorneys Fees.
- 8.04.120 Duration and Other Limitations of Orders.
- 8.04.130 Judgments Which May Include Protective Orders.
- 8.04.140 Statement on Face of Order Included in Judgment.

Section 8.04.010 Issuance of Order Upon Affidavit. A Protective Order may be issued under this Chapter, with or without notice, to restrain any person for the purpose of preventing a reoccurrence of domestic violence and ensuring a period of separation of the persons involved, if an affidavit shows, to the satisfaction of the Judge, reasonable proof of a past act or acts of abuse.

Section 8.04.020 Persons Who May Be Granted Order. An Order under this Chapter may be granted to any person set forth in Section 8.02.010 of this Title 8 in the definition of "Domestic Violence." The right to petition for relief shall not be denied because the petitioner has vacated the household to avoid abuse, and in the case of a marital relationship, notwithstanding that a petition for dissolution of marriage, for nullity of marriage, or for legal separation of the parties has not been filed.

Section 8.04.030 Form of Notice on Order. An Order issued under this Chapter shall set forth on its face a notice in substantially the following form: "NOTICE TO RESTRAINED PERSON: If you do not appear at the court hearing specified herein, the court may grant the requested orders for a period of up to 3 years without further notice to you."

Section 8.04.040 Support Persons for Victims of Domestic Violence; Powers and Duties; Discretion of Court.

- (1) It is the function the Director of the Department of Social Services for the Tribe or any person designated by the Director to provide moral and emotional support for a person who alleges he or she is a victim of domestic violence. The Director shall assist the person in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings where the person or the other party must be present in close proximity. The Director is not present as a legal adviser and shall not give legal advice.
- (2) The Director may accompany either party to any proceeding to obtain a Protective Order, as set forth in this Chapter. Where the party is not represented by an attorney, the Director may sit with the party at the table that is generally reserved for the party and the party's attorney.
- (3) Notwithstanding any other provision of law to the contrary, if the Court has issued a Protective Order, the Director may accompany a party protected by the order during any other court proceedings pending before the Tribal Court to which the protected party is a party to the proceedings and any court ordered settlement conferences, mediation or counseling pursuant to said proceedings. The presence

of the Director does not waive the confidentiality of any court proceedings, mediation, settlement conference or counseling that the protected party participates in and the Director is bound by the confidentiality of the those proceedings.

- (4) Nothing in this Section 8.04.040 precludes a Judge from exercising his or her discretion to remove a person from the courtroom who the Judge believes is disrupting the proceedings or otherwise unduly influencing the party protected by the Protective Order.

Section 8.04.050 Protective Orders; Court to Inform Parties of Terms of Orders. When making a Protective Order, issued under this Chapter, where both parties are present in Court, the Judge shall inform both the petitioner and the respondent of the terms of the Order, including notice that the respondent is prohibited from purchasing, or receiving or attempting to purchase or receive a firearm, and including notice of the penalty for violation.

Section 8.04.060 Mutual Orders; Personal Appearance of Parties; Evidence. The Judge may not issue a mutual order enjoining the parties from specific acts of abuse unless both parties personally appear and each party presents written evidence of abuse or domestic violence. In this case, written evidence is not required if both parties agree that this requirement does not apply.

Section 8.04.070 Ex Parte Order Enjoining Contact. The Judge may issue an ex parte order enjoining a party from contacting, molesting, attacking, striking, threatening, sexually assaulting, battering, telephoning, e-mailing, contacting repeatedly by mail with the intent to harass, or disturbing the peace of the other party and, in the discretion of the Court, on a showing of good cause, of other named family and household members.

Section 8.04.080 Ex Parte Order Excluding Party from Dwelling.

- (1) The Judge may issue an ex parte order excluding a party from the family dwelling, the dwelling of the other party, the common dwelling of both parties, or the dwelling of the person who has care, custody, and control of a child to be protected from domestic violence for the period of time and on the conditions the Court determines, regardless of which party is the owner or lessee of the dwelling.
- (2) The Judge may issue an order under subdivision (1) only on a showing of all of the following: (a) Facts sufficient for the Court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises; (b) that the party to be excluded has assaulted or threatened to assault the other party or any other person under the care, custody, and control of the other party, or any minor child of the parties or of the other party; and (c) that physical or emotional harm would otherwise result to the other party, to any person under the care, custody, and control of the other party, or to any minor child of the parties or

of the other party.

Section 8.04.090 Ex Parte Order Enjoining Specific Behavior. The Judge may issue an ex parte order enjoining a party from specified behavior that the Court determines is necessary to effectuate orders issued under this Chapter including, but not limited to the following: (1) The Court may issue an ex parte order determining the temporary custody of a minor child on the conditions the Court determines; (2) an ex parte order determining the right of a party to visit a minor child on the conditions the Court determines in a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties; (3) an ex parte order determining the temporary use, possession, and control of real or personal property and the payment of any liens or encumbrances coming due during the period the order is in effect; and (4) an ex parte order restraining the married person from specified acts in relation to community, quasi-community, and separate property.

Section 8.04.100 Issuance or Denial on Date Application Submitted. An ex parte order under this Chapter shall be issued or denied on the same day that the application is submitted to the Court, unless the application is filed too late in the day to permit effective review, in which case the Order shall be issued or denied on the next day of judicial business in sufficient time for the Order to be filed that day with the Clerk of the Tribal Court.

Section 8.04.110 Issuance of Orders Child Support; Restitution; Counseling; Attorneys Fees. The Court may issue an order excluding a person from a dwelling if the Court finds that physical or emotional harm would otherwise result to the other party, to a person under the care, custody, and control of the other party, or to a minor child of the parties or of the other party. In addition, the Court may issue any of the following orders after notice and hearing:

- (a) if there is a presumption that the respondent is the natural father of a minor child and the child is in the custody of the petitioner, the Court may order a party to pay an amount necessary for the support and maintenance of the child;
- (b) an order that restitution be paid to the petitioner for loss of earnings and out-of-pocket expenses, including, but not limited to, expenses for medical care and temporary housing, incurred as a direct result of the abuse inflicted by the respondent or any actual physical injuries sustained from the abuse;
- (c) an order that restitution be paid by the petitioner for out-of-pocket expenses incurred by a party as a result of an ex parte order that is found by the Court to have been issued on facts shown at a noticed hearing to be insufficient to support the order;
- (d) an order that restitution be paid by the respondent to any public or private agency for the reasonable cost of providing services to the petitioner required as a direct result of the abuse inflicted by the respondent or any actual injuries sustained thereof;



(e) an order requiring any party to participate in counseling with a licensed mental health professional or through other community programs and services that provide appropriate counseling, including, but not limited to, mental health or substance abuse services, where it is shown that the parties intend to continue to reside in the same household or have continued to reside in the same household after previous incidences of domestic violence;

(f) an order requiring a restrained party to participate in battered treatment counseling;  
and

(g) an order for the payment of attorneys fees and costs of the prevailing party.

Section 8.04.120 Duration and Other Limitation on Orders. In the discretion of the Court, an order issued after notice and a hearing under this Chapter may have a duration of not more than three years, unless otherwise terminated or extended by further order of the Court either on written stipulation filed with the Court or on the motion of a party. The failure to state the expiration date on the face of the order creates an order with a duration of three years from the date of issuance. Nothing in this Section prohibits parties, by written stipulation, from requesting an order and the Court entering an order of permanent duration. Any order for restitution issued under this Chapter shall not include damages for pain and suffering.

Section 8.04.130 Judgments Which May Include Protective Orders. A judgment entered in a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, may include a Protective Order issued under this Chapter.

Section 8.04.140 Statement on Face of Order Included in Judgment. If an order is included in a judgment pursuant to this Chapter the judgment shall state on its face both the following: (1) which provisions of the judgment are the orders; and (2) the date of expiration of the orders, which shall not be more than three years from the date the judgment is issued, unless extended by the Court after notice and a hearing.

## Chapter 5

### REGISTRATION AND ENFORCEMENT OF ORDERS

#### Sections:

- 8.05.010 Transmittal to Enforcement Agencies.
- 8.05.020 Enforceability of Orders; Receipt of Copy by Law Enforcement Agency.
- 8.05.030 Availability of Information Concerning Orders; Law Enforcement Officers.
- 8.05.040 Service of Order Against Domestic Violence.
- 8.05.050 Personal Service of Order Not Required.
- 8.05.060 Notification to San Bernardino County Sheriff's Department.

- 8.05.070 Appointment of Counsel; Payment of Attorney fees and costs.  
8.05.080 Copies of Order to Be Provided to Petitioner.  
8.05.090 Willful and Knowing Violation of Order; Penalty.

Section 8.05.010 Transmittal to Enforcement Agencies. The Judge shall order the petitioner or the attorney for the petition to deliver, or the Clerk of the Court to mail, a copy of an order issued under Chapter 4 of this Title 8 or an extension, modification, or termination of the order, and any subsequent proof of service by the close of the business day on which the order, extension, modification or termination was made, to each Law Enforcement Officer designated by the petitioner or the attorney for the petitioner having jurisdiction over the residence of the petitioner, the residence of the party with care, custody, and control of a child to be protected from domestic violence, and other locations where the Judge determines that acts of domestic violence against the petitioner and any other person protected by the order are likely to occur.

Section 8.05.020 Enforceability of Orders; Receipt of Copy by Law Enforcement Agency. Notwithstanding Section 8.05.010 above, and subject to the provisions of this Section, an Order issued under Chapter 4 of this Title 8 is enforceable in any place on the Reservation. An Order issued under Chapter 4 of this Title 8 is not enforceable by any Law Enforcement Officer other than the Tribe's Law Enforcement Officer, unless that Law Enforcement Officer has received a copy of the Order.

Section 8.05.030 Availability of Information Concerning Orders; Law Enforcement Officers. Each appropriate law enforcement agency shall make available to any Law Enforcement Officer responding to the scene of reported domestic violence, through an existing system for verification, information as to the existence, terms, and current status of an Order issued under Chapter 4 of this Title 8.

Section 8.05.040 Service of Order Against Domestic Violence. An Order issued under Chapter 4 of this Title 8 shall, on request of the petitioner, be served on the respondent by any Law Enforcement Officer who is present at the scene of reported domestic violence involving the parties to the proceeding. The moving party shall provide the officer with an endorsed copy of the Order and a proof of service which the officer shall complete and transmit to the Clerk of the Tribal Court. It is a rebuttable presumption that the proof of service was signed on the date of service.

Section 8.05.050 Personal Service of Order Not Required.

- (1) If a person named in an order issued under Chapter 4 of this Title 8 has not been served personally with the Order but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the Order from the Court, no additional proof of service is required for enforcement of the Order.

- (2) The judicial forms for orders issued under Chapter 4 of this Title shall contain a statement in substantially the following form: "NO ADDITIONAL PROOF OF SERVICE IS REQUIRED IF THE FACE OF THIS FORM INDICATES THAT BOTH PARTIES WERE PERSONALLY PRESENT AT THE HEARING WHERE THE ORDER WAS ISSUED."

Section 8.05.060 Notification to San Bernardino County Sheriff's Department.

- (1) Except as provided in subdivision (2) on receipt of a copy a Protective Order together with subsequent proof of service of the Protective Order, the Law Enforcement Officer, if it is other than the San Bernardino County Sheriff's Department, having jurisdiction over the residence of the petitioner shall immediately notify the San Bernardino County Sheriff's Department regarding the name, race, date of birth, and other personal descriptive information as required by the Tribal Court, the date of issuance of the Order and the Order's duration or expiration.
- (2) Proof of service of the Protective Order is not required for the purposes of Chapter 4 or 5 of this Title if the Order indicates on its face that both parties were personally present at the hearing where the Order was issued and that, for the purpose of Section 8.05.060, no proof of service is required.

Section 8.05.070 Appointment of Counsel; Payment of Attorney Fees and Costs. The Judge may, in its discretion, appoint counsel to represent the petitioner in a proceeding to enforce the terms of a Protective Order. In a proceeding in which private counsel was appointed by the Court, the Court may order the respondent to pay reasonable attorney's fees and costs incurred by the petitioner.

Section 8.05.080 Copies of Order to Be Provided to Petitioner. The Judge shall order the Clerk of the Court to provide to a petitioner, without cost, five certified, stamped, and endorsed copies of any Order issued under Chapters 2, 3, 4, or 5 of this Title 8, and of an extension, modification, or termination of the Order.

Section 8.05.090 Willful and Knowing Violation of Order; Penalty. A willful and knowing violation of an Emergency Protective Order or Protective Order is a crime punishable by up to one (1) year in the Tribal jail or a Five Thousand Dollars (\$5,000.00) fine or both. In the event that the Tribal Court does not have criminal jurisdiction over the person who has violated the Emergency Protective Order or Protective Order, a willful and knowing violation of the Emergency Protective Order or Protective Order is a civil violation punishable by a fine of up to Five Thousand Dollars (\$5,000.00).

Section 3. Severability. If any part or provisions of this Ordinance or the application thereof to any person or circumstance is held in valid, the remainder of this Ordinance including

the application of any such part or provision to the other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Ordinance are severable.

Section 4. Effective Date. This Ordinance shall become effective on the date that it is adopted by the Tribal Council.

CERTIFICATION

The foregoing Ordinance was adopted at a duly convened meeting of the Chemehuevi Tribal Council held on the \_\_\_\_\_ day of June, 2002, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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Edward D. "Tito" Smith, Chairman

ATTESTED:

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Jacqueline Gordon, Secretary-Treasurer



IN THE CHEMEHUEVI INDIAN TRIBAL COURT

_____	)	CASE NO.
	)	
Law Enforcement Officer,	)	<b>PETITION OR APPLICATION FOR</b>
	)	<b>EMERGENCY PROTECTIVE ORDER</b>
	)	
	)	
	)	
vs.	)	
	)	
	)	
_____	)	
Respondent,	)	
	)	
	)	
_____	)	

**A Petition for an Emergency Protective Order and the Order are valid without explicitly stating the address of the endangered person or endangered child or the place of residence, school, employment, the place where the endangered child is provided child care services, or the child's school. (Section 8.02.050) In order for this Court to issue an Emergency Protective Order the endangered person must reside within the exterior boundaries of the Chemehuevi Indian Reservation.**

I \_\_\_\_\_ (*name of law enforcement officer*) allege as follows:

The endangered person resides on the Chemehuevi Indian Reservation.

There are reasonable grounds to believe either or both of the following:

1. That \_\_\_\_\_ (name of endangered person) is in immediate and present danger of domestic violence, based on the person's allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought.

a. The person alleged to me the following acts by the person to be restrained (i.e. respondent):

1. \_\_\_\_ assaulted or attempted to assault the endangered person or another member of that person's household, and/or
2. \_\_\_\_ caused, threatened, or attempted bodily injury to the endangered person or another member of that person's household, and/or
3. \_\_\_\_ made the endangered person or another member of that person's household afraid of physical or emotional harm, and/or
4. \_\_\_\_ sexually assaulted or attempted to sexually assault the endangered person, or member of that person's household, and/or
5. \_\_\_\_ stalked the endangered, and/or
6. \_\_\_\_ other, (please specify):

b. In addition, my investigation has revealed the following facts which are material to the above allegation: *(Include the names of any other persons who are endangered or in need of protection and why you believe so. Please state any other facts which you feel will help the judge decide whether a protective order should be issued in this case):*

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c. If you have not done so, above please provide the following information if known regarding the person to be restrained:

Name:

Age:

Hair Color:

Sex:

Eye Color:

Height:

Date of Birth

Weight: \_\_\_\_\_ Relationship to Endangered Person \_\_\_\_\_

2. That \_\_\_\_\_ (name of child or children), is a child who is a \_\_\_\_\_ (male(s) or female(s)), \_\_\_\_\_ years of age, and is in immediate and present danger of abuse by a family or household member, based on an allegation of a recent incident of abuse or threat of abuse by the family or household member.

a. The person, \_\_\_\_\_ (identify the person who is the source of your information) alleged to me the following acts by the person to be restrained:

1. \_\_\_\_\_ assaulted or attempted to assault the endangered child or another member of the child's household.
2. \_\_\_\_\_ caused, threatened, or attempted bodily injury to the endangered child or another member of that child's household.
3. \_\_\_\_\_ made the endangered child or another member of that child's household afraid of physical or emotional harm
4. \_\_\_\_\_ sexually assaulted or attempted sexually assault the endangered child, or member of that child's household.
5. \_\_\_\_\_ stalked the child.
6. \_\_\_\_\_ other.

Please state the name of the person causing the threat or assault or other harm and the date, time, place and manner of the threat:

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b. In addition, my investigation has revealed the following facts which are material to the above allegation. (include the names of any additional person which you believe are endangered and why. Please state any other facts which you believe will help the judge decide whether a protective order should be issued in this case.):

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c. If you have not done so above please provide the following information if known regarding the person to be restrained:

Name:

Age:

Hair Color:

Sex:

Eye Color:

Height:

Date of Birth:

Weight:

Relationship to endangered child:

**I request the Court to make the Order indicated by the check marks in the boxes below:**

3. \_\_\_\_\_ PERSONAL CONDUCT ORDER \_\_\_\_\_ To be ordered now and effective until the hearing

Restrained person must not contact, molest, harass, attack, strike, threaten, sexually assault, batter, telephone, send any messages to, follow, stalk, destroy personal property, disturb the peace, keep under surveillance or block movements in a public place or thoroughfare, of \_\_\_\_\_ (the endangered person, or persons)

If you have not done so, please provide information material to obtaining an order restraining personal conduct order:

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4. \_\_\_\_\_ RESIDENCE EXCLUSION ORDER \_\_\_\_\_ To be ordered now and effective until the hearing

This includes excluding a party from the family dwelling, the dwelling of the other party, the common dwelling of both parties, or the dwelling of the person who has care, custody, and control of a child to be protected from domestic violence for the period of time and on the conditions the Court determines, regardless of which party is the owner or lessee of the dwelling. (Section 8.04.080)

**Restrained person must immediately move from and must not return to (address):**

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*(The Court may issue an ex parte order excluding a party from the family dwelling or dwelling of the person who has care, custody, and control of a child to be protected from domestic violence regardless of which party is the owner or lessee of the dwelling. However, there must be a showing of facts to the Court that a) the person to stay in the dwelling has a right under color of law to possession; and b) that the party to be excluded has assaulted or threatened to assault the other party or any other person under the care, custody, and control of the other party, or any minor child of the parties or of the other party; and c) that physical or emotional harm would otherwise result to the other party, to any person under the care, custody and control of the other party, or to any minor child or other parties or of the other party.) (Section 8.04.080)*

If you have not done so, please provide information material to obtaining a residence exclusion ordinance:

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5. \_\_\_\_\_ **STAY-AWAY ORDER** \_\_\_\_\_ To be ordered now and effective until the hearing  
Restrained person must remain at least \_\_\_\_\_ yards from

- a. \_\_\_\_\_ The endangered person:
- b. \_\_\_\_\_ The other protected persons listed in item 1 or 2:
- c. \_\_\_\_\_ The endangered person's residence (address optional):
- d. \_\_\_\_\_ The endangered person's place of work (address) :
- e. \_\_\_\_\_ The endangered child's school or place of child care (address optional):
- f. \_\_\_\_\_ The endangered person's vehicle (year , make, model, color and license plate number are optional):
- g. \_\_\_\_\_ Other: *(please specify)*:

If the restrained person is ordered to stay away from all the places requested in item 5, do you know whether the restrained person will still be able to get to his or her residence, school, place of employment, or place of business? \_\_\_\_ Yes \_\_\_\_ No. If no, explain:

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If you have not done so above, please provide information material to obtaining a stay-away order:

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6. \_\_\_\_\_ CHILD CUSTODY

*You should request this relief if you have reason to believe that the endangered child, and any other minor children of the endangered person and the person against whom the order is sought, is in need of an order determining the temporary the care, custody, and control of the minor child and other children and placing them in the family or household with the parent or guardian of the endangered child who is not a restrained party.  
(Section 8.02.090)*

If you have not done so above, please provide information upon which you base your request:

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**OTHER RELIEF:**

**7. \_\_\_\_\_ CHILD SUPPORT**

*If there is a presumption that the respondent is the natural father of a minor child and the child is in the custody of the petitioner, the Court may order a party to pay an amount necessary for the support and maintenance of the child. (Section 8.04.110 (a)).*

If you have not done so above, please provide any information material to the issue of obtaining child support:

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**8. \_\_\_\_\_ RESTITUTION**

*The Court may order payment of restitution to the petitioner for loss of earnings and out-of-pocket expenses, including, but not limited to expenses for medical care and temporary housing, incurred as a direct result of the abuse inflicted by the respondent or any actual physical injuries sustained from the abuse. (Section 8.04.110 (b))*

If you have not done so, please provide information regarding the need for restitution:

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**9. \_\_\_\_\_ RESTITUTION FOR EXPENSES FROM EX PARTE ORDER**

*The Court may order payment of restitution to the petitioner for out-of-pocket expenses incurred by a party as a result of an ex parte order that is found by the Court to have been issued on facts shown at a noticed hearing to be not true, or otherwise insufficient to support the order (Section 8.04.110 (c))*

If you have not done so, please provide any information regarding the need for restitution:

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**10. \_\_\_\_\_ RESTITUTION TO PUBLIC OR PRIVATE AGENCY**

*The Court may order payment of restitution by the respondent to any public or private agency for the reasonable cost of providing services to the petitioner required as a direct result of the abuse inflicted by the respondent or any actual injuries sustained thereof (Section 8.04.110 (d))*

If you have not done so, please provide any information regarding the need for restitution:

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**11. \_\_\_\_\_ COUNSELING**

*The Court may order any party to participate in counseling with a licensed mental health professional or through other community programs and services that provide appropriate counseling, including, but not limited to, mental health or substance abuse services, where it is shown that the parties intend to continue to reside in the same household or have continued to reside in the same household after previous incidences of domestic violence, including battered treatment counseling for the restrained party. (Section 8.04.110 (e) & (f))*

If you have not done so, please provide any information material to the need for counseling.

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12. \_\_\_\_\_ ATTORNEY FEES

*The Court may order payment of attorneys fees and costs of the prevailing party. (Section 8.04.110 (g))*

If you have not done so, please provide to the Court any information material to the issue of attorneys' fees.

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DATED:

\_\_\_\_\_  
LAW ENFORCEMENT OFFICER

IN THE CHEMEHUEVI INDIAN TRIBAL COURT

\_\_\_\_\_) ) CASE NO.  
\_\_\_\_\_) )  
Law Enforcement Officer, )  
\_\_\_\_\_) )  
\_\_\_\_\_) ) (EMERGENCY) PROTECTIVE ORDER  
\_\_\_\_\_) )  
vs. )  
\_\_\_\_\_) )  
\_\_\_\_\_) )  
\_\_\_\_\_) )  
\_\_\_\_\_) )  
Respondent, )  
\_\_\_\_\_) )  
\_\_\_\_\_) )  
\_\_\_\_\_) )  
\_\_\_\_\_)

**This order is effective when made. This (Emergency) Protective Order expires at the earlier of the following times: (1) midnight on the seventh day following the day of its issuance or (2) if the seventh calendar day following the day of its issuance falls on a Saturday or Sunday, then at midnight on the following Monday. A hearing on whether to continue or modify this order is set for \_\_\_\_\_ (time) on \_\_\_\_\_ (date) at the Chemehuevi Indian Tribal Court, 1990 Palo Verde Drive Chemehuevi Indian Reservation, Havasu Lake, California, 92363. Officer \_\_\_\_\_ shall enforce this Order immediately on receipt. It is enforceable anywhere within the exterior boundaries of the Reservation by any Law Enforcement Officer that has received**

the order or is shown a copy of the order. If proof of service on the restrained person has not been received, the Law Enforcement Officer shall advise the restrained person of the terms of the Order and then shall enforce it. (Section 8.01.040, ordinance No. 02-06-29-03 entitled "An Ordinance of the Tribal Council of the Chemehuevi Indian Tribe Granting the Chemehuevi Tribal Court the Jurisdiction and Authority to Issue Orders Restraining Domestic Violence.")

**A petition for an Emergency Protective Order and the Order are valid without explicitly stating the address of the endangered person, or endangered child or children, or the place of residence, school, employment, the place where the endangered child is provided child care services, or the child's school. (Section 8.02.050) In order for this Court to issue an Emergency Protective Order the endangered person must reside within the exterior boundaries of the Chemehuevi Indian Reservation.**

**To the Protected Person:** This order will last only until the date and time noted above. If you wish to seek continuing protection, you will have to reapply for a Protective Order from the Court. You may seek the advice of an attorney as to any matter connected with you application for any future court orders. The attorney should be consulted promptly so that the attorney may assist you in making your application. (Section 8.02.100.(4)(a))

**To the Restrained Person:** This order will last until the date and time noted above. The protected party may, however, obtain a more permanent restraining or Protective Order from the Court. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that the attorney may assist you in responding to the application. (Section 8.02.100(1)(b)) **NOTICE TO RESTRAINED PERSON:** If you do not appear at the Court hearing specified herein, the Court may grant the requested order for a period of up to 3 years without further notice to you. (Section 8.02.100(5))

**In the case of an endangered child:** This order will last only until the date and time noted above. You may apply for a more permanent restraining or Protective Order from the Court. You may seek the advice of an attorney in connection with the application for a more Permanent Restraining Order or Protective Order. (Section 8.02.100(5))

Having reviewed the Petition for (Emergency) Protective Order, and having considered the evidence brought before the Court,

The Court finds and concludes as follows:

1. The endangered person resides within the exterior boundaries of the Chemehuevi Indian Reservation.



2. That \_\_\_\_\_ (*name of endangered person and/or child or children*) is in immediate and present danger of domestic violence by \_\_\_\_\_ (*name of respondent*).

3. I find that the respondent:

- a. \_\_\_\_\_ assaulted or attempted to assault the endangered person or another member of that person's household, and/or
- b. \_\_\_\_\_ caused, threatened, or attempted to bodily injury the endangered person or another member of that person's household, and/or
- c. \_\_\_\_\_ made the endangered person or another member of that person's household afraid of physical or emotional harm, and/or
- d. \_\_\_\_\_ sexually assaulted or attempted to sexually assault the endangered person, or member of that person's household, and/or
- e. \_\_\_\_\_ stalked endangered person, and/or.
- f. \_\_\_\_\_ other, specified as follows:

4. I find that an (Emergency) Protective Order is necessary to prevent the occurrence or recurrence of domestic violence or child abuse.

5. In addition, I find the following facts regarding the respondents identification and description:

Name:

Age:

Hair Color:

Sex:

Eye Color:

Height:

Date of Birth:

Weight:

Relationship to Endangered Person

6. In addition, I find the following facts:

7. I find that \_\_\_\_\_ (*name of child, or children*), is a child who is a \_\_\_\_\_ (*male(s) or female(s)*), \_\_\_\_\_ years of age, and is in immediate and present danger of abuse by a family or household member, based on an allegation of a recent incident of abuse or threat of abuse by the family or household member.

8. In addition, I find the respondent:

- a. \_\_\_\_\_ assaulted or attempted to assault the endangered child or another member of the child's household.
- b. \_\_\_\_\_ caused, threatened, or attempted bodily injury to the endangered child or another member of that child's household.
- c. \_\_\_\_\_ made the endangered child or another member of that child's household afraid of physical or emotional harm
- d. \_\_\_\_\_ sexually assaulted or attempted sexually assaulting the endangered child, or member of that child's household.
- e. \_\_\_\_\_ stalked the child.
- f. \_\_\_\_\_ other, specified as follows:

9. In addition, I find that the following additional person(s) are endangered:

(name)	(name)
(name)	(name)

**ACCORDINGLY (AS INDICATED BY THE CHECK MARKS),**

**IT IS ORDERED AS FOLLOWS:**

**1. \_\_\_\_\_ PERSONAL CONDUCT ORDER**

Respondent must not contact, molest, harass attack, strike, threaten, sexually assault, batter, telephone, send any messages to, follow, stalk, destroy personal property, disturb the peace, keep under surveillance or block movements in a public place or thoroughfare, of \_\_\_\_\_ *(the endangered person, or persons)*

**2. \_\_\_\_\_ RESIDENCE EXCLUSION ORDER**

I find that there are sufficient (a) facts for the Court to ascertain that the person to stay in the dwelling has a right under color of law to possession of the premises; (b) that the party to be excluded has assaulted or threatened to assault the other party or any other person(s) under the care, custody, and control of the other party, or any minor child of the parties or of the other party; and (c) that physical or emotional harm would otherwise

result to the other party, to any person(s) under the care, custody, and control of the other party, or to any minor child/children of the parties or of the other party. (Section 8.04.080)

The respondent is excluded immediately from: \_\_\_\_\_ (check) the family dwelling located at \_\_\_\_\_ (address); \_\_\_\_\_ (check) another dwelling located at \_\_\_\_\_ (address); \_\_\_\_\_ (check) the common dwelling located at \_\_\_\_\_ (address); \_\_\_\_\_ (check) the dwelling of \_\_\_\_\_ who has care, custody and control of a minor child or children to be protected from respondent's domestic violence, and must not return to the above locations.

3. \_\_\_\_\_ **STAY-AWAY ORDER**                      **Restrained person must stay at least \_\_\_\_\_ yards from:**

- a. \_\_\_\_\_ The endangered person:
- b. \_\_\_\_\_ The other protected persons listed in item 1 or 2:
- c. \_\_\_\_\_ The endangered person's residence (address optional):
- d. \_\_\_\_\_ The endangered person's place of work (address) :
- e. \_\_\_\_\_ The endangered child's school or place of child care (address optional):
- f. \_\_\_\_\_ The endangered person's vehicle (year, make, model, color and license plate number are optional):
- g. \_\_\_\_\_ Other, specified as follows:

4. \_\_\_\_\_ **CHILD CUSTODY**

I find, with respect to the following children, that an immediate and present danger of domestic violence exists or that a child is in immediate and present danger of abuse and that an Emergency Protective Order is necessary to prevent the occurrence or recurrence of domestic violence or child abuse: (name children)

I award temporary care, custody and control of any minor of the endangered person and order that the child or children be placed in the care and control of the endangered child and any other minor children in the family or household with the parent or guardian of the endangered child who is not a restrained party. (Section 8.02.090)

**OTHER RELIEF:**

5. \_\_\_\_\_ **CHILD SUPPORT**

The Court finds that there is a presumption that the respondent is the natural father of a minor child, or children named \_\_\_\_\_, and the child/children is in the custody of the petitioner. (Section 8.04.110 (a);

**Accordingly,**

The Court orders payment of support and maintenance of the minor child or children in the amount of \$ \_\_\_\_\_.

**6. \_\_\_\_\_ RESTITUTION**

The Court finds that petitioner has incurred loss of earnings and out-of-pocket expenses, including, but not limited to expenses for medical care and temporary housing, as a direct result of the abuse inflicted by the respondent or any actual physical injuries sustained from the abuse. (Section 8.04.110 (b);

**Accordingly,**

The Court orders restitution in the following amount: \$ \_\_\_\_\_.

**7. \_\_\_\_\_ RESTITUTION FOR EXPENSES FROM EX PARTE ORDER**

The Court finds that petitioner pay out-of-pocket expenses incurred by \_\_\_\_\_ (a party) as a result of an ex parte order which was issued on \_\_\_\_\_ at a noticed hearing to be insufficient to support the order. (Section 8.04.110 (c).

**Accordingly,**

The Court orders restitution in the following amount \$ \_\_\_\_\_.

**8. \_\_\_\_\_ RESTITUTION TO PUBLIC OR PRIVATE AGENCY**

The Court finds that a public or private agency identified as \_\_\_\_\_ has incurred reasonable costs in providing required services to the petitioner as a direct result of the abuse inflicted by the respondent or any actual injuries sustained thereof in the amount of \$ \_\_\_\_\_ (Section 8.04.110 (d);

**Accordingly,**

The Court orders restitution in the following amount \$ \_\_\_\_\_.

**9. \_\_\_\_\_ COUNSELING**

The Court finds that it has been shown that the parties intend to continue to reside in the same household or have continued to reside in the same household after previous incidences of domestic violence;

**Accordingly,**

The Court orders that \_\_\_\_\_ (*either party*) is in need of counseling and is ordered to participate in counseling with a licensed mental health professional or through other community programs and services that provide appropriate counseling, including, but not limited to, mental health or substance abuse services, where it is shown that the parties intend to continue to reside in the same household or have continued to reside in the same household after previous incidences of domestic violence; including battered treatment counseling for the restrained party.

The Court further orders petitioner or the restrained party to participate in battered treatment counseling.

*(Section 8.04.110 (e) - (g))*

**10. \_\_\_\_\_ FIREARMS**

Respondent is prohibited by this Order from purchasing, or receiving or attempting to purchase or receive a firearm. *(Section 8.04.050)*

**11. \_\_\_\_\_ ATTORNEY FEES**

The Court may order payment of attorneys fees and costs of the prevailing party. *(Section 8.04.110 (g))*

**12. \_\_\_\_\_ PENALTIES FOR VIOLATION OF ANY OF THE TERMS OF THIS ORDER**

A willful and knowing violation of this Emergency Protective Order or Protective Order is a crime punishable by up to one (1) year in the Tribal jail or a Five Thousand Dollars (\$5,000.00) fine or both. In the event that the Tribal Court does not have criminal jurisdiction over the person who has violated the Emergency Protective Order or Protective Order, a willful and knowing violation of the Emergency Protective Order or Protective Order is a civil violation punishable by a fine of up to Five Thousand Dollars (\$5,000.00) *(Section 8.05.090)*

**12. NOTIFICATION TO LAW ENFORCEMENT OFFICERS**

a. Except as provided in Section b below, on receipt of a copy of this (Emergency) Protective Order together with subsequent proof of service of the (Emergency) Protective Order, the Law Enforcement Officer, if the officer is other than the San Bernardino County Sheriff's Department, having jurisdiction over the residence of the petitioner shall

immediately notify the San Bernardino County Sheriff's Department regarding the name, race, date of birth, and other personal descriptive information as required by the Tribal Court, the date of issuance of the Order and the Order's duration or expiration. (Section 8.05.060 (1))

b. Proof of service of the Protective Order is not required for the purposes of Chapter 4 or 5 of this title if the Order indicates on its face that both parties were personally present at the hearing where the Order was issued and that, for the purpose of Section 8.05.060, no proof of service is required.

**NOTICE: NO ADDITIONAL PROOF OF SERVICE IS REQUIRED IF THE FACE OF THIS FORM INDICATES THAT BOTH PARTIES WERE PERSONALLY PRESENT AT THE HEARING WHERE THE ORDER WAS ISSUED.**

**IF THE ADJACENT SPACE IS CHECKED IT REVEALS THAT BOTH PARTIES WERE PERSONALLY PRESENT AT THE HEARING WHERE THE ORDER WAS ISSUED AND THAT FOR THE PURPOSE OF Section 8.05.060, NO PROOF OF SERVICE IS REQUIRED.**

13. \_\_\_\_\_ WAIVER OF SERVICE FEE

The Court finds that a sufficient showing of financial need has been made by petitioner and the fee normally paid to a Law Enforcement Officer for serving an Order issued under this Title is hereby waived.

DATED:

\_\_\_\_\_  
CHIEF JUDGE, CHEMEHUEVI INDIAN TRIBAL COURT



AN ORDINANCE OF THE TRIBAL COUNCIL OF THE  
CHEMEHUEVI INDIAN TRIBE ENACTING A NEW  
CHAPTER OF THE TRIBAL CODE ENTITLED INDIAN  
CHILD WELFARE ORDINANCE.

The Tribal Council for the Chemehuevi Indian Tribe ("Tribe") hereby ordains as follows:

Section 1. Findings: The Tribal Council for the Tribe finds and declares that the purpose of this Ordinance is to:

(A) Protect the best interests of Chemehuevi children, to prevent the unwarranted breakup of Chemehuevi families, to maintain the connection of Chemehuevi children to their families and Tribe, and to promote the stability and security of the Tribe by establishing tribal standards for the conduct of child custody proceedings involving Chemehuevi children;

(B) Foster cooperative intergovernmental relations between the Tribe and the State of California, and other States and Counties, with regard to the welfare of Chemehuevi children and families;

(C) Provide child welfare services to Chemehuevi children and families that are in accord with the traditions, laws and cultural values of the Tribe; and

(D) Preserve the opportunity for Chemehuevi children to learn about their culture and heritage, and to become productive adult members of the Tribe, by experiencing their culture on a permanent basis.

Section 2. Adoption of a New Chapter of the Tribal Code Entitled: "Indian Child Welfare Ordinance." A new chapter entitled "Indian Child Welfare Ordinance" is hereby added to the Chemehuevi Tribal Code which shall read as follows:

INDIAN CHILD WELFARE ORDINANCE

Chapter 5.04

GENERAL PROVISIONS

Sections:

- 5.04.010 Definitions
- 5.04.020 Jurisdiction Of The Tribal Court
- 5.04.030 Duty To Investigate And Report Abuse And Neglect
- 5.04.040 Records Maintenance And Protection;  
Confidentiality



- 5.04.050 Medical Examinations
- 5.04.060 Payment Of Fees And Expenses
- 5.04.070 Responsibilities Of Adults
- 5.04.080 Commencement Of Action
- 5.04.090 Standard Of Proof
- 5.04.100 Use Of Reports In Juvenile Proceedings
- 5.04.110 Consolidation
- 5.04.120 Presence Of Parent, Guardian, Custodian Or  
Guardian Ad Litem
- 5.04.130 Grounds For Re-Hearing
- 5.04.140 Modification, Revocation Or Extension Of An Order  
Ad Litem
- 5.04.150 Guardian Ad Litem
- 5.04.160 Testimony By Videotape

5.04.010 Definitions: The terms under this Ordinance are to be interpreted in a broad fashion designed to encourage the jurisdiction of the Tribal Court over children who come under this Ordinance, and to facilitate the authority of the Tribal Court to act to protect the interests of Chemehuevi children and families.

The terms of this subsection shall be interpreted in light of tribal laws, customs, and traditional child-rearing practices. Terms not specifically defined in this Ordinance shall be defined according to their normal usage, or as defined in the federal Indian Child Welfare Act, as appropriate.

As used in this Ordinance, the terms listed below shall have the following meaning:

(1) Administrative Review - A case review system to review the case plan and the placement of each child receiving foster care maintenance payments from state or federal funds by a panel of no less than three (3) appropriate persons. The Social Security Act as amended by P.L. 96-272 shall set the minimum requirement for an administrative review.

(2) "Best Interests of the Child" - Means the preservation of the connection, or the creation of such a connection if one does not currently exist, between a Chemehuevi child and his or her culture, family and Tribe in a setting that is stable, secure, safe, healthy and emotionally, spiritually, socially, and intellectually enriching, and in which the special needs of that child may be met.

(3) Case Plan - A written document for each child under the jurisdiction of the Court which shall include a detailed service plan designed to reunite the family, and be designed to achieve placement in the least restrictive (most family-like) setting available and in close proximity to the Parent's home consistent with the best interests and special

needs of the child. In the event that reunification is determined not to be in the best interests of the child, the family and/or the Tribe, the service plan shall be designed to achieve other appropriate permanent placement goals that are in the best interests of the child, the family and/or the Tribe, provided that such goals are not inconsistent with other provisions of this Ordinance. The case plan shall include at a minimum a family, which will provide those services, the time frame in which the services will be provided, what standard will be considered compliance with the services, and the respective responsibilities of the Tribal Social Services Department, the family and the child in making the services available and in taking advantage of such services. The case plan shall include at a minimum all requirements of the Social Security Act as amended by the Adoption Assistance and Child Welfare Act of 1980, P.L. 96-272 for case plans where the child is receiving foster care maintenance payments from federal or state funds. The Tribal Court shall review this case plan and its implementation by the Department of Social Services in order to determine whether or not "reasonable efforts" are being made to prevent or eliminate the need for removal of the child from the home, or to make possible the child's return to his or her home. The Court shall include such findings in its Order upon a review or disposition.

(4) Case Review System - A procedure to review the status of each child in foster care no less than once every six (6) months, beginning from the date of placement, by the Tribal Court and Tribal Social Services Department or Administrative Review Panel, if appropriate.

(5) Contempt of Court - Any willful disobedience or interference with any order of the Court constitutes contempt of Court.

(6) Custodian - A person other than a parent or guardian, who has custody of a minor and who is providing food, shelter and supervision to him or her.

(7) Delinquent Act - An act which is designated as a crime under any Chemehuevi Ordinance.

(8) Domicile - The permanent residence of an individual. The domicile of a child is presumed to be that of the child's mother unless proven otherwise.

(9) Extended Family - A person who is a tribal member and who has reached the age of eighteen (18) and is the minor's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, step-parent, godparent or traditionally appointed custodian.

(10) Foster Care - A social service which provides substitute family care for a child for a planned period of time when the child's own family cannot care for him or her. The goal of foster care or any placement is a permanent family for the child.

(11) Guardian - A person other than the minor's parent who is by law responsible for the care and custody of that minor or his or her estate, or both.

(12) Guardian ad-litem - An adult appointed by the Court to represent a child in any suit to which he or she may be a party, for the protection of the child's best interests.

(13) Minor - An unmarried person under eighteen (18) years of age; a person eighteen (18) years of age or older concerning whom proceedings are commenced in Tribal Court prior to his or her eighteenth birthday; a person eighteen (18) years of age or older under the continuing jurisdiction of the Tribal Court.

(14) Parent - Includes natural or adoptive parents 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.

(15) Shelter Care - A home or other living facility used as a temporary living place for a minor pending the return of the minor or his or her family, or his or her placement in a residential facility designed for long-term placement which does not physically restrict the minor.

(16) Status Offender - A minor who: (a) does not comply with the requirements of the compulsory school attendance section of this Ordinance; (b) disobeys, continually and habitually, the reasonable and lawful demands of his parent, guardian or custodian and who is beyond parental control; or (c) has left the home of the parent, guardian, or custodian without consent and has remained away for at least twenty-four (24) hours.

(17) Youth in Need of Care - A child who has been found to be in one or more of the following situations:

(A) Abused child - a child who has suffered or is likely to suffer a non-accidental physical injury which causes or creates a substantial risk of death, disfigurement, impairment or bodily functions, or serious physical or emotional harm, as determined by appropriate medical or professional personnel, or has been sexually abused or subjected to the threat of sexual abuse;

(B) Neglected child - a child whose parent or custodian fails or is unable to carry out their parental or custodial duties to the extent that the child's physical or emotional health, safety, welfare or intellectual development are harmed, or threatened, including the failure of such parent or other custodian to take advantage of reasonably available public assistance and service programs designed to furnish such needs where the parent or custodian cannot provide such needs on their own;

(C) Abandoned or dependent child - a child whose parent or custodian has left the child without reasonable arrangements for care and supervision such that the physical or emotional health of the child is affected or threatened, or a child who has no parent or other custodian able, willing, and available to fulfill parental duties; or

(D) Delinquent child - a child who has been found by a court to have committed repeated delinquent acts or omissions, including violations of any criminal laws or ordinances, or a child who is beyond the control of his or her parents or custodians to the extent where outside assistance is required.

5.04.020 Jurisdiction Of The Tribal Court: Unless otherwise defined, the jurisdiction of the Chemehuevi Tribe over child welfare matters shall extend to all children who are within the jurisdiction of the Court under this Ordinance, regardless of whether they reside on or off the Tribe's reservation or service area or are domiciled on the Chemehuevi Indian Reservation. The Tribal Court shall also have jurisdiction over Chemehuevi Indian Children who reside beyond the service area of the Tribe. It is understood that the jurisdiction of the Chemehuevi Tribe over children under this Ordinance may in some cases be concurrent with the jurisdiction of other sovereigns.

Chemehuevi children shall include all children of Chemehuevi descent who are members of the Chemehuevi Tribe or eligible for membership in the Tribe wherever they are found. The Tribe shall have jurisdiction over children who are children of Chemehuevi tribal members or of their spouses, and over children by the consent of the parties with custody of such children. The Tribe shall have jurisdiction over other Indian children who reside on Tribal trust land.

5.04.030 Duty To Investigate And Report Abuse And Neglect:

(1) Basis of Investigation and Report - Persons who have a reasonable cause to suspect that a minor has been abused or neglected shall report the suspected abuse or neglect to the

tribal agency responsible for investigating allegations of abuse or neglect. The Tribal Social Services Department, or a tribal law enforcement agency after one is established, shall immediately investigate all allegations of abuse and neglect, and if appropriate, proceed according to the provisions of this Ordinance.

(2) Persons Required to Report - Those persons who are required to report suspected abuse or neglect include any physician, nurse, dentist, optometrist or 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, court counselor, clerk of the Court or other judicial system official.

(3) Other Persons Reporting - Any person may make a report of suspected abuse or neglect to the proper tribal officials.

(4) Anonymity - Those persons reporting, except those specified in Section 5.04.030(2), may remain anonymous if the court so determines.

(5) Immunity from Liability - All person or agencies reporting in good faith, known or suspected instances of abuse or neglect, shall be immune from civil liability and criminal prosecution.

5.04.040 Records Maintenance And Protection;  
Confidentiality:

(1) Court Records - A record of all hearings under this Ordinance shall be made and preserved under the jurisdiction of the Court has ended.

(2) Confidentiality - All Court records are confidential and shall not be open to inspection other than by Court personnel or by any person except for the following:

- (A) The minor and his or her attorneys;
- (B) The minor's parent, guardian or custodian and his or her attorney;
- (C) The tribal caseworker and the tribal attorney;
- (D) The present officer; or
- (E) Any other person the Court determines has a valid

reason to see such records and who is issued a written order detailing the reasons for permitting such person to review such records.

All Court files, documents, or other material associated with a child custody proceeding governed by this Code shall be kept confidential, unless ordered released by order of the Court. This confidentiality provision applies to all divisions and departments of the Tribe, including social service and law enforcement agencies. This section applies to the release of the names of children, families or witnesses involved in proceedings under this Ordinance.

Disclosure of documents and material to authorize public agencies, whether tribal, federal or state, in the performance of the official duties of those agencies shall not violate this section.

All records included within this section shall be kept in a secure place by the Court Clerk, and shall be released only pursuant to procedures developed by the Chief Judge of the Court. No other release of information shall be permitted without an order of the Court.

(3) Oath - Each person who inspects a minor's record shall be required to sign a written oath pledging to maintain the confidentiality of the records. Failure to abide by this pledge shall constitute contempt of Court.

(4) Destruction of Records - All records of the minor shall be destroyed when the minor is no longer subject to the Courts jurisdiction, except that records involving adoption or abuse of a minor shall not be destroyed and shall remain sealed until further order of the Court.

5.04.050 Medical Examinations: The Court may order a medical and/or psychological examination for a minor or any other party before the Court if it is determined after a hearing that the party's medical or psychological health are relevant to the issues before the Court.

5.04.060 Payment Of Fees And Expenses: There shall be no fee or filing a petition under this Ordinance nor shall any fee be charged by any tribal officer for the service of process or for attendance in Court in any such proceedings. Witness fees shall be payable in accordance with the rules of this Court. Such fees and expenses, cost and publication of summons, and the expense of a trial of an adult person, when approved by the Court, shall be paid by either the parent, guardian or custodian of the minor before the Court, or by the Tribe.

5.04.070 Responsibilities Of Adults:

(1) Parental Responsibility.

(A) Parent as Party The parent of a child within the jurisdiction of the Tribal Court may be made a party to a petition if the child is alleged to be a youth-in-need-of-care, or a juvenile offender.

(B) Dispositions The Court may order the parent under this section to submit to counseling, participate in any probation or other treatment program ordered by the Court and, if the child is committed for institutionalization, to participate in any institutional treatment or counseling program including attendance at the site of the institution.

(C) Fines A parent shall not be liable for any fine their child may be ordered to pay.

(D) Cost of Support The Court shall order the parent, guardian or custodian to pay the reasonable cost or part of the cost of Court proceedings, and support and treatment of the child that the parent is financially able to pay if:

1. The child is adjudicated to be a youth-in-need-of-care, or a juvenile offender; and

2. The Court orders that child be placed with an agency, institution or an individual other than the parent.

(2) Other Audits: The Court shall join as a party in any proceeding under this Ordinance any adult necessary for proper disposition of any case heard pursuant to this Ordinance.

(3) Enforcement: The Court may enforce any of its orders issued under this section by use of its contempt power.

5.04.080 Commencement Of Action:

(1) Petition Except as otherwise provided below, proceedings in cases under this Ordinance are begun by petition.

(2) Exceptions to Petition In the case of violations of motor vehicle or boating laws and ordinances, or fish and game laws and ordinances a petition shall not be required. The issuance of a traffic or other citation or summons for

these violations is sufficient to invoke the jurisdiction of the Tribal Court. Unless the Court orders otherwise, a preliminary investigation is not required in such cases.

(3) Contents of Petition A petition shall be entitled "In the Matter of \_\_\_\_\_, A Minor," and shall set forth:

(A) The name, birth date and residence of the minor;

(B) The names and residences of the minor's parent, guardian or custodian;

(C) A citation to the specific section of this Ordinance, which gives the Court jurisdiction of the proceedings.

(D) Where applicable, a citation to the section of the Tribes' Criminal ordinance which the minor is alleged to have violated;

(E) If the minor is in detention or shelter care, the place of detention or shelter care and the time he/she was taken into custody; and

(F) A concise statement of the facts underlying the petition.

(4) Preparation of Petition The statements in the petition may be upon information and belief and the petition shall be prepared, verified and signed by the presenting officer or tribal caseworker.

(5) Dismissal The Court may dismiss a petition at any stage of the proceedings.

5.04.090 Standard Of Proof: The standard of proof for a juvenile offender's adjudicatory hearing, or termination of parental rights, shall be proof beyond a reasonable doubt, and for all other hearings the standard of proof shall be clear and convincing evidence.

5.04.100 Use Of Reports In Juvenile Proceedings: For the purpose of establishing that a child is a youth in-need-of-care, and for the purpose of determining proper disposition of a minor in any case, written reports and other materials relating to the child's mental, physical and social history and condition, may be received in evidence, and may be considered by the Court along with other evidence, but the Court may require that the person who wrote the report or prepared the material appear as a witness if he or she is reasonably available. Only evidence in any of these reports or documents shall be considered by the Court.



5.04.110 Consolidation: When more than one child is involved in the same situation which may be found to constitute abuse or neglect, or when more than one child is alleged to be involved in the same law violation, the proceedings may be consolidated, except that separate hearings maybe held with respect to disposition.

5.04.120 Presence Of Parent, Guardian, Custodian Or Guardian Ad Litem: The Court shall endeavor to insure the presence at all hearings of one or both parents or guardian or custodian of the minor. If no one is present, the Court may appoint a guardian ad litem to protect the interests of the child.

5.04.130 Grounds For Re-Hearing: A parent, guardian or custodian of any child whose status has been adjudged in a proceeding under this Ordinance, or any adult affected by an order or judgment in a proceeding under this Ordinance, may at any time petition the Court for a new hearing on the grounds that new evidence which was not known or could not with due diligence have been made available at the original hearing and which might affect the order or judgment, has been discovered. If it appears to the Court that there is such new evidence which might affect its order or judgment, it shall order a new hearing and enter such order or judgment and make such disposition of the case as is warranted by all the facts and circumstances and the best interests of the child.

5.04.140 Modification, Revocation Or Extension Of An Order:

(1) Upon Motion - The Court may modify, revoke or extend an order at any time upon the motion of the following:

- (A) The minor and his/her attorney;
- (B) The minor's parent, guardian or custodian, and his or her legal representative if appropriate;
- (C) The Tribal caseworker; or
- (D) The presenting officer.

(2) Hearing - A hearing to modify, revoke or extend a Court order shall be conducted according to the rules of the Court.

5.04.150 Guardian Ad Litem: The Court, at any stage of a proceeding, shall appoint a guardian ad litem for a minor who is a party, if the minor has no parent, guardian or custodian appearing on behalf of the minor or if the interest of the minor conflicts with the interest of parents, guardians or custodians or when it appears to the Court that the child's best interests

warrant.

5.04.160 Testimony By Videotape: At the discretion of the Court, and where necessary to protect the best interests of the child, the Court may permit minors to testify by videotape, or take other steps necessary to protect the child in proceedings under this Ordinance.

## Chapter 5.06

### YOUTH IN NEED OF CARE

#### Sections:

- 5.06.010 Youth In Need Of Care Provision
- 5.06.020 Investigations And Reports
- 5.06.030 Taking A Minor Into Custody
- 5.06.040 Release Of Minor From Custody
- 5.06.050 Petition
- 5.06.060 Warrants And Custody Orders
- 5.06.070 Preliminary Inquiry
- 5.06.080 Necessity For Emergency Custody
- 5.06.090 Emergency Placement
- 5.06.100 Investigation And Recommendations By The Caseworkers
- 5.06.110 Informal Adjustment Conference
- 5.06.120 Petition Process

#### 5.06.010 Youth In Need of Care Provision:

(1) Policy: It is the policy of the Chemehuevi Tribe to ensure an adequate physical and emotional environment that will protect the health, safety, and development of all Chemehuevi children; to compel the parent or custodian of a Chemehuevi child to provide a proper environment for their children; to facilitate changes or improvement in the home environment where necessary to provide a proper environment for the child; to establish a judicial process to protect the health and safety of Chemehuevi children including the provision of substitute care and supervision for children in need of care; and to protect a child's identity and ties with his or her family and the tribal community.

#### 5.06.020 Investigations And Reports:

(1) Required investigations The caseworker shall initiate all investigations of matters that arise under this Ordinance, when any allegation of neglect, abuse, dependency or neglect is made. The Court may require that an investigation be made and a report be submitted to the Court in writing in all cases under this Code in which a petition has been filed, except violations of traffic, fish and game and boating laws, and ordinances. Investigations for

juvenile offenders shall be submitted to the Court for dispositional purposes only and shall not be submitted until after adjudication is completed and the Court has found that the minor has committed the alleged acts.

(2) Scope of Investigation The investigation shall cover the child's home environment, history and associations, the present condition of the child and family, and recommendations as to the child's future care. The worker shall make conclusions as to the likely future of the family if no intervention occurs. In cases involving the duty of support, the study shall include such matters as earnings, assets, financial obligations and employment.

5.06.030 Taking A Minor Into Custody:

(1) A tribal representative shall be designated to handle emergency custody of minors under this Ordinance. The representative shall be a law enforcement officer when the Tribe establishes a law enforcement department or contracts for law enforcement with another governmental agency. In the absence of a law enforcement officer, the tribal representative shall be a tribal social worker or some other person designated by the tribal social worker.

The tribal representative shall take a minor into custody if:

(A) He or she has reasonable grounds to believe that the minor is a youth-in-need-of-care and is in immediate danger from his or her surroundings and that removal is necessary; or

(B) An emergency custody order has been issued by the Tribal Court for the youth; or

(C) He or she has reasonable cause to believe that a youth who is subject to the Tribal Court's jurisdiction is leaving the jurisdiction of the Court without permission.

5.06.040 Release Of Minor From Custody:

(1) The tribal representative who takes a minor into custody shall:

(A) Release the minor, immediately to the minor's parent, guardian or custodian and issue verbal instructions or warnings as may be appropriate; or

(B) If the tribal representative is not a tribal caseworker, deliver the minor immediately to the

caseworker or to shelter care designated by the Court, or to a medical facility if the minor is believed to be in need of medical attention. If the minor is not delivered to a caseworker, the tribal representative shall notify the caseworker as soon as possible of the circumstances of the custody and location of the minor.

(2) The tribal caseworker, immediately upon arranging for custody of the minor or upon placement of the minor, shall review the need for custody and shall:

(A) Notify the parent, guardian or custodian within twenty-four hours of learning that custody of the child has been taken; or

(B) Release the minor to his/her parent, guardian or custodian unless the child requires shelter care.

(C) A minor taken into custody under this section shall be released to his/her parent, guardian or custodian within five (5) days of the time he or she was taken into custody unless the Court issues an order continuing custody to the child with the Tribe. In the event of a dispute regarding a minor's release from custody during the first five (5) days of custody, the child welfare caseworker and the tribal social services director shall have complete authority, in the absence of a Court order, to determine if the minor is to remain in custody.

5.06.050 Petition:

(1) The tribal caseworker shall review and investigate all complaints, and shall file a petition with the Court upon a preliminary determination that a child is a youth-in-need-of-care.

(2) The form of petition shall be in a form authorized pursuant to an order of the Tribal Court. The petition shall state:

(A) The specific sections of this Ordinance which give the Court jurisdiction; and

(B) The provision of this Ordinance or relevant Court order which is alleged to have been violated;

(C) The name, address, and age of the minor who is the subject of the petition;

(D) The names of all parties to the allegations; and

(E) The facts upon which the allegations are based, including the date, time, and location where the alleged facts occurred including any alleged witnesses; and if the child is in detention, shelter care or other custody, the time and date the child was placed in such care and the reasons therefore.

The present officer may assist in the preparation of any petition under this Ordinance.

5.06.060 Warrants And Custody Orders: Warrants and custodial orders shall be issued pursuant to the Rules of the Court.

5.06.070 Preliminary Inquiry:

(1) Policy. The purpose of a preliminary inquiry is to determine the best interests of the minor and the Tribe with regard to any action to be taken with regard to a child once he or she is taken into emergency custody. In determining the child's best interests, the Court shall examine whether probable cause exists to believe the alleged act or abuse or neglect was committed and whether continued custody is necessary pending further proceedings.

(2) Time. A preliminary inquiry involving a child shall be held within five (5) days from the time a child is placed in emergency custody. If the child has been released from emergency custody, the preliminary inquiry shall be held within ten (10) days from the date the child is released from emergency custody. If a child has not been placed in emergency custody, the preliminary inquiry shall be held within ten (10) days of the filing of a petition, if it is not dismissed.

(3) Attendance of Parent, Guardian or Custodian. If the minor's parent, guardian or custodian is not present at the preliminary inquiry, the Court shall determine what efforts have been made to notify and to obtain their presence. If it appears that further efforts are likely to produce their appearance in Court, the Court shall recess for not more than twenty-four (24) hours and shall direct the presenting officer to make continued efforts to obtain their presence.

(4) Dismissal of Petition and Release of Minor. If the Court determines that there is no probable cause to believe that the minor is a youth-in-need-of-care, the Petition shall be dismissed without prejudice and the minor released. If the Court determines that there is probable cause to believe that the minor is a youth-in-need-of-care but that the minor is not in need of emergency custody, the minor

shall be released to the custody of his or her parent, guardian or custodian pending final disposition of the petition, under the protective supervision of the Tribe.

5.06.080 Necessity For Emergency Custody: A child shall be placed in emergency custody if the Court finds probable cause to believe that the minor is a youth-in-need-of-care and one or more of the following conditions exists:

(1) The minor is suffering from an illness or injury, and no parent, guardian, custodian or other person is providing adequate care of him or her;

(2) The minor is in immediate danger from his or her surroundings, and removal is necessary for the safety or well being of the child;

(3) The minor will be subject to injury or abuse by others or by him or herself if not placed in custody by the Court;

(4) The minor has been abandoned by his or her parent, guardian, custodian or other person;

(5) No parent, guardian, custodian or other person is able or willing to provide adequate supervision and care for the minor; or

(6) The minor will run away, or be taken beyond the jurisdiction of the Court, and will be unavailable for further proceedings.

5.06.090 Emergency Placement: A child in need of emergency placement may be placed, pending a Court hearing, in one of the following placements:

(1) With extended family members who will be able to protect the health and safety of the child;

(2) A foster care facility licensed or approved by the Tribal social services department;

(3) A private family home licensed or approved as a foster home by the Tribal social services department; or

(4) A shelter care facility by the Tribal social services department.

No child who is determined to be a youth-in-need-of-care shall be detained in a detention facility or in jail.

5.06.100 Investigation And Recommendations By The Caseworker:

(1) Investigation. The caseworker shall investigate within forty-eight (48) hours of the preliminary inquiry or release of the minor to determine whether the interests of the minor and the Tribe require that further action be taken.

(2) Recommendations. Upon completion of the investigation, the child welfare caseworker shall recommend to the presenting officer:

- (A) No further action be taken;
- (B) An informal adjustment conference; or
- (C) A petition be filed.

If the presenting officer does not file a petition, the minor shall be released immediately if in emergency custody and all charges shall be dismissed unless informal adjustment is recommended, in which case the matter shall proceed as required by this Ordinance.

5.06.110 Informal Adjustment Conference:

(1) When permitted. Within ten (10) days after the preliminary inquiry, the caseworker may hold an informal conference with the minor and the minor's parent, guardian, custodian or legal representative to discuss alternatives to the filing of a petition if:

- (A) The admitted facts bring the case within the jurisdiction of the Court;
- (B) An informal adjustment of the matter would be in the best interests of the minor and the Tribe; and
- (C) The minor and his or her parent, guardian, custodian or legal representative consent to an informal adjustment with knowledge that the consent is voluntary.

(2) Alternatives. As a result of the informal adjustment conference, the caseworker may:

- (A) Refer the minor and the parent, guardian or custodian to a community agency for needed assistance;
- (B) Order terms of supervision, calculated to assist and benefit the minor, parents, guardian or custodian which regulate the activities of the minor and his or

her parents, guardian or custodian and which are within their ability to perform;

(C) Accept an offer of restitution if voluntarily made by the minor and appropriate; or

(D) Recommend that the presenting officer file a petition pursuant to this Code if it appears that no other alternative will be in the best interests of the minor and of the Tribe.

(3) Written Agreement

(A) Content. The caseworker shall set out in writing the agreement and conclusions reached at the informal adjustment conference. The parties shall sign the agreement and be provided with a copy. An informal adjustment agreement shall not exceed (6) months in length, except that the time period may be extended upon order of the Court.

(B) Review period. The caseworker shall review the family progress every thirty (30) days. If, at any time after the initial thirty (30) day period but before the end of the six (6) months, the caseworker concludes that the agreement as it is being followed is not serving the best interests of the child, the caseworker shall recommend that the presenting officer file a petition pursuant to this Ordinance.

(C) Acceptance by Presenting Officer. The informal adjustment agreement shall be reviewed by the presenting office after it is signed by the parties. The presenting officer shall accept or reject the agreement within five (5) days. If the agreement is rejected, the presenting officer shall make written comments indicating that conditions are necessary for the agreement to be accepted. The parties shall be informed at the start of any informal adjustment negotiation by the caseworker that the presenting officer has the authority to review and approve any agreement which is reached.

(D) Notice to the Court. The presenting officer shall file a copy of the approved informal adjustment agreement with the Court.

(E) Disposition Upon Completion of Agreement. If the informal adjustment agreement is followed and the caseworker does not recommend the filing of a petition during the informal adjustment period, the presenting officer shall dismiss the petition at the end of the



agreement.

(4) Use of Statements Made: No statements made during the informal adjustment conference, whether written, oral or demonstrative, may be used against the minor or any of the parties or witnesses if a petition is filed.

5.06.120 Petition Process:

(1) Petition: The petition shall be prepared as required by the Rules of Court.

(2) Notice: Notice of a hearing on the petition, or on any matter related to the petition or the minor, shall be given to the parties as required by the Rules of the Court.

(3) Summons: Summons on the petition shall be issued and served as required by the Rules of the Court.

(4) Hearings: An adjudicatory hearing shall be held within thirty (30) days after the petition is filed, except upon order of the Court. The Court shall conduct the hearing for the purpose of determining if a minor is a youth-in-need-of-care. A finding by the Court that a minor is a youth-in-need-of-care shall be considered to be a final order for purposes of appeal. If the Court finds that the minor is a youth-in-need-of-care, the Court shall dispose of the child in a manner consistent with the child's best interests and which is the least restrictive setting for the child, pursuant to Chapter 5.08 of this Ordinance.

## Chapter 5.08

### DISPOSITION AND PLACEMENT PROVISIONS

#### Sections:

- 5.08.010 Policy: Requirements For Removal Of Child From Home
- 5.08.020 Pre-Dispositional Report
- 5.08.030 Dispositional Hearing
- 5.08.040 Disposition Of A Youth-In-Need-Of-Care
- 5.08.050 Disposition Of Juvenile Offender
- 5.08.060 Conditions Set By The Court
- 5.08.070 Off Reservation Agreements
- 5.08.080 Periodic Review Of Placement; Periodic Review
- 5.08.100 Permanency Planning Hearing; Disposition
- 5.08.110 Procedures For Placement Review Hearings
- 5.08.120 Periodic Reviews After Permanency Planning Hearing
- 5.08.130 Permanency Planning Hearing Not Required
- 5.08.140 Notice Of Change In Child's Placement
- 5.08.150 Tribal Social Services Department's Duties For

- 5.08.160 Long-Term Placement; Reports And Recommendations  
Confidentiality Of Tribal Social Services  
Department Records
- 5.08.170 Continuing Jurisdiction

5.08.010 Policy: Requirements For Removal Of Child From Home: The removal of a child from his or her home for foster care placement, termination of parental rights or long-term placement must result from a judicial determination that continued custody would be contrary to the health and welfare of such child. Reasonable efforts shall be made before foster care placement, termination of parental rights and long-term placement to prevent or eliminate the need to remove the child from his or her home, and reasonable efforts are to be made to make possible the child's return to his or her home provided, however, that nothing in this section shall prevent the emergency removal of a child as allowed by this Ordinance. Where more than one child is removed from a home, it shall be the Tribe's policy to keep all the children so removed in one placement or shelter.

5.08.020 Pre-Dispositional Report:

(1) Preparation. The Court shall order the caseworker to prepare a report to the Court for the disposition of a child who is a juvenile offender or a youth-in-need-of-care if the Court determines a report is necessary. The predispositional report shall be filed at least five (5) days before the dispositional hearing, except by order of the Court. The report shall contain a specific plan for the care and assistance to the minor or his or her parents, guardian or custodian which is calculated to resolve the problems presented in the petition which are the least restrictive to the minor and consistent with the Tribe's child's best interests.

(2) Additional Reports. Copies of the predispositional reports shall be made available to the minor, the parents, guardian, custodian or legal representative at least two (2) days before dispositional hearing. Any party may submit a separate pre-dispositional report to the Court in the same time period set out in this subsection.

5.08.030 Dispositional Hearing:

(1) Time Limits. The dispositional hearing shall be held within twenty (20) days of the hearing on the petition for the purpose of determining the proper disposition of the minor, except upon order of the Court.

(2) Exceptions. Upon request of any of the parties or of the presenting officer, or if the Court determines that this would be in the best interests of the child, the Court may

hold a dispositional hearing immediately after the adjudicatory hearing on the petition. This petition shall only be used in extraordinary circumstances.

5.08.040 Dispositional Of A Youth-In-Need-Of-Care: Upon making a finding that a minor is a youth-in-need-of-care, the Court may make any of the following dispositions, listed in order of priority:

(1) Permit the minor to remain with his or her parents, guardian or custodian under protective supervision subject to such limitations and conditions as the Court may prescribe;

(2) Place the minor with an extended family member under protective supervision within the boundaries of the Reservation subject to such limitations and conditions as the Court may prescribe;

(3) Place the minor in a foster home under protective supervision on the Reservation which has been licensed or approved by the Tribal social services department, subject to such limitations and conditions as the Court may prescribe.

(4) Place the minor in a residential facility under protective supervision as designated by the Court.

(5) Place the minor in a foster home or an extended family member's home approved by the Tribal social services department outside the Reservation, subject to such limitations and conditions as the Court may prescribe;

(6) Transfer legal custody to an agency responsible for the care of youth-in-need-of-care children, or to an extended family member or other person who the Court finds to be qualified to receive and care for the child, subject to such limitations and conditions as the Court may prescribe;

(7) Recommend that termination proceedings be initiated;

(8) Recommend that either full or partial emancipation be ordered; or

(9) Place the child in a long-term placement, including consideration of guardianship as an alternative to adoption or termination of parental rights.

5.08.050 Dispositional of Juvenile Offender: If a minor has been adjudged a juvenile offender, the Court may make any or all of the following dispositions:

- (1) Any disposition that is authorized for the disposition of a youth-in-need-of-care;
- (2) Place the minor on probation subject to conditions set by the Court;
- (3) Place the minor in an institution or agency designated by the Court;
- (4) Place the minor in a detention facility;
- (5) Require the minor to make restitution; or
- (6) In cases of violations of traffic laws or ordinances, the Court may, in addition to any other disposition, restrain the child from driving for such period of time as the Court deems necessary, and may take possession of the child's driver's license.

5.08.060 Conditions Set By The Court: The conditions or limitations which the Court may set upon a child, his or her parent, guardian, custodian or any other party pursuant to this Code shall be designed to improve the condition of the child if he/she is found to be youth-in-need-of-care or the behavior of the child if he/she is found to be a juvenile offender. Such conditions or limitations include but are not limited to: counseling or therapy; restriction on visits with one or both parents; payment of support or other necessary costs; attendance at school; participation in tribal-sponsored activities; restrictions on associations; curfew; or any other dispositions as set out in this Ordinance.

5.08.070 Off Reservation Agreements: Whenever a minor is placed in a home or facility located off the Tribe's Reservation, the Court shall require the party receiving custody of the minor to sign an agreement that the minor will be returned to the Court upon Court Order, and submitting to tribal jurisdiction. Absent such a signed agreement, any person or institution shall be deemed to have consented to return such child to the Court by virtue of having taken placement under this Ordinance, and to have consented to tribal jurisdiction for purposes of the child.

5.08.080 Periodic Review Of Placement; Periodic Review: Within six months of the original dispositional hearing and each six (6) months thereafter so long as a child remains within the jurisdiction of the Court, the child is in short term or temporary care, or the child is in a placement not within the preferences of this Ordinance, the status of a child will be reviewed by the Court to:

- (1) Determine the continuing need for appropriateness of

Court jurisdiction and of the placement;

- (2) Determine the extent of compliance with the case plan;
- (3) Determine the extent of progress made toward easing or lessening the cause requiring the placement in foster care; and
- (4) Project a likely date by which the child may be returned home or placed for adoption or legal guardianship.

The Court at the periodic review may consider any recommendations on these issues by the Tribal social services department, or the Administrative Review Panel, if appropriate. An interested party may request a dispositional review at any time, and such review shall be granted at the discretion of the Court. A dispositional order is a final order for purposes of appeal.

5.08.090 Permanency Planning Hearing; Disposition: Within 18 months of the original placement and every six (6) months thereafter, the Court shall hold a permanency planning hearing in accordance with this Ordinance to determine the long-term status of the child. Recommendations made by the social services department shall be presented to the Court at this hearing and the Court shall decide if the recommendations shall be followed. The permanency planning hearing may be combined with the periodic review. The Court may order, but not be limited to, any of the following dispositions:

- (1) Returning the child to the parent(s);
- (2) Ordering that a guardian be appointed and placing the child with the guardian;
- (3) Continuing the child in foster care for a specific period;
- (4) Continuing the child in foster care on a permanent long-term basis; and
- (5) Recommending parental rights be terminated and the child placed for adoption.

5.08.100 Procedures For Placement Review Hearings: The Court shall return a child to the physical custody of the parent or guardian unless by a preponderance of evidence it finds that returning the child would cause a substantial risk to the physical or emotional well-being of the child. The Tribal Social Services Department has the burden of proving the risk. The Court shall review the Social Services and California Child Protection Services reports, if appropriate, and consider any other evidence and testimony including the parent or guardian's

treatment or efforts at rehabilitation. The Court also may order additional services which will facilitate the return of the minor to the custody of his/her parent or guardian.

5.08.110 Periodic Reviews After Permanency Planning Hearing: Periodic reviews conducted by the Court after the initial permanency planning hearing shall determine the appropriateness of the placement, and continued appropriateness and extent of compliance with the permanent plan for the child, the extent of compliance with the case plan, and adequacy of services provided to the child. By the end of the 18th month of foster care, a decision regarding the long-term placement of the minor shall be made, except by order of the Court.

5.08.120 Permanency Planning Hearing Not Required: Subsequent permanency planning hearings need not be held if:

- (1) The child has been adopted;
- (2) The child is a ward on a guardian; or
- (3) The child is in long-term foster placement intended to be permanent in nature, provided the initial dispositional hearing required under this Ordinance has been held, and provided further the Tribal Court explicitly orders that no further permanency planning hearings are required.

5.08.130 Notice Of Change In Child's Placement: The removal of the child from the parent's home, change of the child's placement or a determination affecting a parent, guardian, or custodian's legal right to custody of a child shall require notice of such change to the parties, and a review hearing shall be conducted on such change upon the written request of any party.

5.08.140 Tribal Social Services Department's Duties For Long-Term Placement; Reports And Recommendations: The Tribal Social Services Department shall have the duty to recommend long-term options for a minor within the jurisdiction of the Court. The caseworker shall submit a report at least five (5) days before the periodic review hearing conducted before the Tribal Court. This report shall discuss compliance with the placement preferences of the Tribe, the long term prospects of reuniting the child with his or her family, the placement options available to the child, and the caseworkers recommendations as to which placement would serve the best interests of the child.

5.08.150 Confidentiality Of Tribal Social Services Department Records: All records of the Tribal Social Services Department regarding placement of a child within the jurisdiction of the Court under this Ordinance are confidential and shall be made available only to the Court or a party and a legal

representative, and the minor's parent, guardian, or custodian, or to other persons the Court determines has a valid reason to seize such records.

## Chapter 5.10

### TERMINATION OF PARENTAL RIGHTS

#### Sections:

- 5.10.010 Purpose
- 5.10.020 Enrollment And Inheritance Status
- 5.10.030 Grounds For Non-Voluntary Termination
- 5.10.040 Petition
- 5.10.050 Notice of Hearing
- 5.10.060 Summons
- 5.10.070 Reports
- 5.10.080 Appointment Of Counsel Or Guardian Ad Litem
- 5.10.090 Hearing
- 5.10.100 Judgment
- 5.10.110 Appeal
- 5.10.120 Voluntary Termination Of Parental Rights

5.10.010 Purpose: The purpose of this Chapter is to provide for voluntary or non-voluntary termination of the parent-child relationship by Court order. Non-voluntary termination of parental rights over a child is a serious matter and an action that the Court may take only after all remedies have been exhausted in the attempt to maintain the stability of the family or to maintain a minimum level of positive contact between the child and his or her family, including extended family.

It is the further purpose of this Chapter to provide meaningful and clear standards to be applied to cases involving termination of parental rights and to ensure competent, stable and on-going care of the child by prompt and final adjudication.

5.10.020 Enrollment And Inheritance Status: No adjudication of termination of parental rights shall affect a child's enrollment status as a member of the Tribe or a child's degree of blood quantum or a child's rights of inheritance from natural parents, or a child's relationship with extended family members, where appropriate.

#### 5.10.030 Grounds For Non-Voluntary Termination:

(1) Termination Allowed: The Court may terminate a parent's rights when the Court finds beyond a reasonable doubt that the parent is (1) unfit; or (2) the conduct or condition of the parent is such as to render him or her

unable to care for the child and such conduct or condition is unlikely to change within one (1) year; and continued contact between the child and the parent on any basis is not in the child's best interest.

(2) Factors to be Considered: In determining unfitness, conduct or condition, the Court shall consider, but is not limited to, any of the following:

- (A) The parent has abandoned the minor; or
- (B) Emotional illness, mental illness or mental deficiency of the parent is of such duration or nature as to render the parent unable to care for the ongoing physical, mental and emotional needs of the minor within one (1) year from the date of determination of illness; or
- (C) Abuse of neglect of the minor as defined by this Ordinance; or
- (D) Excessive use of intoxicating liquors or illegal substances over a period of one (1) or more years; or
- (E) Imprisonment of a single parent for a period of one (1) or more years; or
- (F) Adjudication by a Court of a plea of guilty by a parent to the charge that the parent, either intentionally or (recklessly, wilfully or wantonly) caused the death or injury of a minor's sibling; or
- (G) Failure of the parent to provide a home or reasonable substitute physical care and maintenance where custody is lodged with others; or
- (H) Failure of the parent to maintain regular visitation or other contact with the child as designated in a plan to reunite the child with the parent; or
- (I) Failure of the parent to maintain consistent contact or communication with the child over a period of one (1) year; or
- (J) Rehabilitation of the parents has been unsuccessful.

(3) Parent Unknown - The rights of the parent may be terminated as provided herein if the Court finds the child was left under such circumstances that the identity of the parent is unknown and cannot be ascertained, despite



diligent searching, and the parent has not come forward to claim the child within six (6) months following the finding of the child.

(4) Best Interests of Child - In considering terminating the rights of a parent, the Court shall give primary consideration to the best interests of the child as shown by physical, mental and emotional condition and needs.

5.10.040 Petition: The petition shall be prepared as required by this Ordinance, and in conformity with the rules of the Tribal Court.

5.10.050 Notice of Hearing: Notice of hearing shall be given to all parties as required by this Ordinance, and in conformity with the rules of the Tribal Court.

5.10.060 Summons: Summons shall be issued and served as required by this Ordinance, and in accordance with the Rules of the Tribal Court.

5.10.070 Reports:

(1) Time Limit The child welfare caseworker shall prepare and present a written report to the Court at least ten (10) days before the termination of parental rights hearing.

(2) Contents The report shall contain the opinions of all professionals consulted with recommendations to the Court and the social history of the parent and child and all other pertinent facts.

(3) Copies A copy shall be available to the parent whose rights are being terminated at least ten (10) days before the hearing.

(4) Additional Reports

(A) A parent whose rights are being terminated may also file a written report. A copy shall be made available to the presenting officer at the same time it is filed with the Court.

(B) The Court may also order other individuals or agencies to submit written reports. All reports shall be filed ten (10) days prior to the hearing and shall be made available to the parent whose rights are being terminated at the same time they are filed.

5.10.080 Appointment Of Counsel Or Guardian Ad Litem: In any proceeding for non-voluntary termination of parental rights, or any rehearing or appeal thereon, the Court may appoint an

advocate to represent the child as counsel or guardian ad litem if the Court determines that the interests of the child are not being represented by any of the parties in the proceeding, in the Court's discretion. The Court may appoint a guardian ad litem in a voluntary termination of parental rights proceedings.

5.10.090 Hearing:

(1) Time Limit; Purpose A termination of parental rights hearing shall be held within thirty (30) days after a petition is filed for the purpose of determining whether grounds for termination exists as set out in this Ordinance, except by order of the Court.

(2) Witnesses The Court shall subpoena experts who have knowledge of the particular case, including physicians, psychiatrists, mental health professionals, social workers and any individual from the community cognizant of the traditional child-rearing methods and attitudes of the Tribe. The Court may subpoena any other witnesses or persons who the Court finds have a direct interest in the cases. If the proposed witnesses are not subject to tribal subpoena, the Court may request that they appear and testify, or obtain a subpoena from the nearest Court with jurisdiction over such witnesses.

(3) Conduct The hearing shall be conducted in accordance with this Ordinance.

5.10.100 Judgment: If parental rights to a child are terminated, the Court shall issue a judgment detailing its decision, the reasons for the decision, and order the disposition of the minor as follows:

- (1) Place the minor with an extended family member; or
- (2) Place the minor in a foster care or shelter care facility which has been approved by the Tribe; and in either case
- (3) Place the child in long-term placement, and proceed to the adoption section of this Ordinance if appropriate.

5.10.110 Appeal: A judgment of non-voluntary termination of parental rights is a final order for purposes of appeal.

5.10.120 Voluntary Termination Of Parental Rights:

(1) Initial Procedures The Court may terminate parental rights when the parent desires to voluntarily give up such rights. In assuming jurisdiction of a voluntary termination of parental rights proceeding, the Court shall require that:

(A) No voluntary termination shall occur before a child is ten (10) days old, except by order of the Tribal Court;

(B) No voluntary termination shall occur until a written report is submitted to the Court by a recognized social services agency indicating that social services and counseling have been offered to the parent, the consequences of the parent's actions have been fully explained to and are understood by the parent, and such action is in the best interests of the child; or

(C) A parent may waive in writing, before a Judge of the Court, the right to appear at a hearing, the right to notice of hearing, or both, and the Court shall assure that such waiver is knowing and voluntary.

(2) Counseling In any proceeding for voluntary termination of parental rights, if the Court has reasonable doubt as to the emotional state of the petitioner or the petitioner's ability to understand the consequences of his or her decision, the Court shall place the child with the Social Services Department for a period not to exceed thirty (30) days in order to allow the parent to consider the decision. Further, the Court shall order legal and psychological counselling for the parent in order to assure the parents understanding of the consequences of the decision and a report of the results of such counseling shall be made to the Court.

(3) Procedures after Counseling Immediately after the end of the thirty (30) day period, based upon the report received by the Court, the Court shall either:

(A) Return custody of the child to the parent;

(B) Process the petition for voluntary termination of parental rights; or

(C) Extend the period for no more than thirty (30) additional days to allow additional counseling. At the expiration of the additional counseling and based upon the results of the counseling reports, the Court shall proceed as allowed by this Code. Any child freed for placement through voluntary consent to termination of parental rights shall be placed according to the provisions of this Ordinance.

Chapter 5.12

LONG-TERM PLACEMENT PROVISIONS

Sections:

- 5.12.010 Guardianship
- 5.12.020 Adoption

5.12.010 Guardianship:

(1) Policy: It shall be the policy of the Chemehuevi Tribe to prefer guardianship as a long-term placement option for tribal children over adoption, and to prefer guardianship as an option over long-term foster care.

(2) Power to Appoint Guardians for Minors; exception: The Tribal Court is empowered to appoint a guardian, either for the person or the estate or both, subject to the requirements of other ordinances of the Tribe, except that appointment of a guardian ad litem shall not be subject to these requirements.

5.12.020 Adoption:

(1) Who may Adopt and Under What Conditions:

(A) Policy: It is the policy of the Chemehuevi Tribe that its children should be adopted only as a matter of last resort, and alternative long-term placements such as guardianship and long-term foster placement should first be considered which maintain the connection between the child and the parent and family. A decree of adoption shall not terminate the legal relationship between the child and the child's natural family members, except by order of the Court.

(B) Who May Adopt - The following persons may adopt:

1. Any adult may file a petition to adopt;
2. In the case of married persons maintaining a home together, both spouses shall be petitioners except that, if one of the spouses is the natural parent of the minor to be adopted, the natural parent shall not be a party to the petition.
3. A married person legally separated may adopt without the consent of his/her spouse.

(C) Conditions to Adoption

1. The welfare of the child shall be primary;
2. A person adopting shall be at least 10 years older than the minor;

(D) Order for Preference for Adoption: Preference in adoption shall be given in the following order:

1. Tribal member adoptive parents - at least one person of any adoptive couple must be a tribal member;
2. Families in which one person is a Tribal member or can prove descendants from a Chemehuevi Tribal member;
3. Indian adoptive parents, which means that at least one person of any adoptive couple must be a member of or eligible for membership with a federally recognized tribe;
4. Non-Indian adoptive parents.

(2) Who May Be Adopted: The following persons may be adopted under this Code.

(A) A minor subject to the jurisdiction of the Chemehuevi Tribal Court.

(B) An adult whose parents are both dead and who is subject to the jurisdiction of the Chemehuevi Tribal Court.

(C) An adult whose parent is dead, who is being adopted by his or her step-parent and who is subject to the jurisdiction of the Chemehuevi Tribal Court.

(3) Petition: A petition for adoption shall be filed with the Court. It shall be verified under oath by the adoptive parent(s) and shall contain:

(A) The full name, residence, place of birth, date and sex of the child, with attached documentary proof of the date and place of the birth of the child to be adopted.

(B) Documentary proof of the child's membership status in the Tribe, if such proof exists;

(C) The full name, residence, date and place of birth, occupation of the adoptive parent(s), statement of relationship to the child, and documentary proof of

marital status, provided, however, nothing in this section shall not be interpreted to prohibit single parent adoptions, and tribal membership or Indian status;

(D) proof of parental consent to the adoption where the petitioners are relatives of the child by blood or marriage; except where the natural parents have abandoned the child and cannot be located or where there is proof of a Court order terminating parental rights of the parents to said child.

(E) An agreement by the adopting parent of the desire that a relationship of parent and child be established between them and the child;

(F) A full description and statement of value of all property owned, possessed or held in trust by and for the child.

(G) A citation to the specific section of this Ordinance giving the Court jurisdiction of the proceedings; and

(H) A brief and concise statement of the facts which may aid the Court in its determination.

(4) Investigative Report

(A) Role of Tribal Caseworker - The caseworker shall prepare and present to the Court a report within 60 days of the filing of a petition for adoption or a supplemental report as ordered by the Court as to the suitability of the child for adoption, as well as to the financial, moral, physical fitness, general background of the adoptive home, and adoptive parent or parents. A home study shall be conducted as part of this procedure. The tribal caseworker shall contact appropriate agencies and individuals who have relevant knowledge and such contacts and relevant information shall be included in the report. The tribal caseworker shall make written recommendations on the proposed adoption.

(B) Other Agencies; Individuals - The Court may also order other appropriate agencies or individuals to prepare and file written reports with the Court to aid in the Court's determination on the suitability of the proposed adoption.

(C) Copies - Copies of reports shall be served on petitioner at the same time they are presented to the

Court.

(5) Consent to Adoption

(A) When Required - Written consent to adoption is required of:

1. Each biological, adoptive and acknowledged parent whose parental rights have not been involuntarily terminated, who has not voluntarily terminated his or her parental rights or has not been declared incompetent;
2. The guardian or custodian, if empowered to consent;
3. The Court, if the guardian or custodian is not empowered to consent; and
4. The minor, if he or she is over twelve (12) years of age.

(B) When Not Required - Written consent to an adoption is not required if:

1. The parent's rights have been involuntarily terminated;
2. The parent has voluntarily terminated his or her parental rights; or
3. The parent has been declared incompetent.

(6) Procedure for Signing the Consent to Adopt: Written consents, where required by this Code, shall be attached to the petition for adoption. Written consent to an adoption shall be signed and acknowledged before a Notary Public. Consent shall not be accepted or acknowledged by the Court unless signed and acknowledged more than ten (10) days after the birth of the child, except by order of the Court. An interpreter shall be provided if required by the Court. The Court shall have authority to inquire as to the circumstances behind the signing of a consent under this section.

(7) Withdrawal of Consent to Adopt: Written consent cannot be withdrawn after the entry of a final order of adoption. Consent may be withdrawn prior to the final order of adoption upon a showing based upon a preponderance of the evidence at a hearing before the Court that consent was obtained by fraud, duress or coercion, or the best interests of the child require the consent to adoption be voided.

(8) Hearing on Adoption

(A) Purpose, Time Limit - A hearing shall be held within 90 days of receipt of an adoption petition to determine if it is in the minor's best interest to be placed with petitioners.

(B) Procedure at Hearing - Adoptive parent or parents shall appear personally at the hearing. At or before the hearing, any biological, adoptive or acknowledged parent consenting to the adoption must appear personally before the judge, in open Court so the Court can determine the voluntariness and understanding with which consent was given, if the Court determines the validity of the consent is an issue. All other persons whose consent is necessary shall be duly notified and shall personally appear, if the Court determines the validity of the consent is at issue.

The judge shall examine all persons appearing as to the suitability of the child for adoption, the validity of consent to adoption, the financial, moral and physical fitness, responsibility of the adoptive parents, and whether the best interests of the child will be promoted by the adoption.

The Court shall also hear natural extended family members to decide whether the child's legal relationship to the extended family should be terminated.

(9) Order

(A) Granting the Petition - If the Court is satisfied that it is in the best interest of the child to grant the petition, the Court may enter a final decree of adoption as follows:

1. In the case of a child who has lived with the adoptive parent for more than one year before the adoption petition was filed, the final decree of adoption shall be entered immediately; and

2. In all other cases, the Court shall order that the child be placed in the legal custody of the adoptive parent for at least one year; at that time, the Court shall request a supplemental report, and if the Court determines that the best interests of the child are served, shall enter the final decree of adoption immediately.

(B) Contents of Adoption Order - The final order of



adoption shall include such facts necessary to establish that the child is eligible and suitable for adoption, and that the adoptive home and parents are adequate and capable of providing the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence produced at the hearings.

(C) Denying the Petition - If satisfied the adoption petition will not be in the best interests of the child, the petition shall be denied. The Court may request the Tribal Social Services Department or other agencies authorized to provide such services to assist in the placement and care of the child. Where the Court finds the best interests of the child will not be served by the adoption, a guardian shall be appointed and suitable arrangements made for the care of the child in accordance with the applicable provisions of this Ordinance.

(1) Adoption Records

(A) Confidentiality - All records, reports, proceedings and orders are confidential, permanent records of the Court, shall be sealed and shall not be available for release for inspection by the public, except by Order of the Court.

(B) Release of Information, Notice to Biological Parent: Information contained in such records shall be released upon petition to the Court by the adopted person after reaching legal age or majority, or upon order of the Court upon showing of good and sufficient cause by persons other than the adopted person who have petitioned for such information. In either case, no information shall be released unless:

1. The biological parent(s) has been given actual and confidential notice by the Court of a petition for release of information or notice of intent to issue such information has been published in a local newspaper of general circulation without revealing the name of the biological parent; and

2. The biological parent has consented in writing before the Court to release information; the Court determines the need for information is greater than the parent's right to privacy. The Court may refuse to divulge the biological parent's name but release other information so long as the information will not lead to the

discovery of the parent's name.

(11) Adoptive Birth Certificates; Release of Original Certificate: Within five (5) days of the final decree of adoption entered by the Court, the Division of Vital Statistics of the State Department of Health of the State which issued the original certificate of birth shall be notified by the Clerk of the Court that the adoption has taken place, giving the full name, sex, birthday and names of natural parents, in order that a new record of birth in the new name and with the name or names of the adopting parents to be recorded; said Division shall be provided with a certified copy of the final decree of adoption.

(12) Name of Legal Status of Adopted Child: Minor children adopted by order of the Court shall assume the surname of the persons by whom they are adopted, unless the Court orders otherwise. They shall be entitled to the same rights as natural children of the persons adopting them. However, adoption does not confer tribal membership status on adopted children who would not be otherwise eligible. Adoption does not terminate the rights of natural extended family members of the child, as a group, except by Order of the Court.

#### Chapter 5.14

#### TRANSFER OF JURISDICTION

##### Sections:

- 5.14.010 Policy
- 5.14.020 Procedure For Transfer Of Jurisdiction
- 5.14.030 Requesting Transfer Of Jurisdiction
- 5.14.040 Procedure Upon Acceptance of Transfer of Jurisdiction
- 5.14.050 Petition For Transfer of Jurisdiction By Party Other Than The Tribe

5.14.010 Policy: It shall be the policy of the Tribe to request transfer of child custody proceedings taken place in state Court under the Indian Child Welfare Act (ICWA) involving a Chemehuevi Child, as that term is defined in this Ordinance, except when good cause exists to the contrary. This Ordinance contemplates the following procedure will be followed in transferring jurisdiction of child custody proceedings from State to Tribal Court: a decision by the Tribe to request transfer; a petition to the State Court requesting transfer pursuant to the ICWA; a petition for acceptance of jurisdiction by the Tribal Court; and acceptance of jurisdiction of the state Court proceeding by the Chemehuevi Tribal Court. If a question exists as to whether the Tribal Court will accept jurisdiction of a particular child custody proceeding, the Tribe may request an advisory opinion from the Tribal Court, before petitioning the

state Court for transfer of jurisdiction as set out below.

5.14.020 Procedure For Transfer Of Jurisdiction:

(1) Assessment of Case by Social Services Department Recommendation: Upon receipt of notice of an child custody proceeding governed by the ICWA in State Court, or upon receiving notice in any other form as a Chemehuevi Child is involved in a child custody proceeding as defined by the Indian Child Welfare Act before a state Court, the Tribal Social Services Department shall prepare an assessment of the child and family's situation, and shall make a written recommendation as to whether the case should be transferred from state Court to the jurisdiction of the Chemehuevi Tribal Court. This assessment shall be prepared within twenty (20) days of receiving notice that a Chemehuevi child is involved in a state Court ICWA proceeding.

(2) Factors to be Considered in Recommendation: The Social Services staff recommendation to transfer jurisdiction to the Tribal Court shall consider, among other factors, the following: age of the child and circumstances of the family, special needs of the child (if any), location of the family and whether the state is attempting to reunite the family, availability of Tribal services to serve the child's particular needs, availability of suitable Chemehuevi tribal homes for placement of the child, whether financial assistance for the care of the child will continue if jurisdiction is transferred, and the cost to the Tribe in legal fees to accomplish transfer of jurisdiction.

(3) Committee to Review Recommendation and Determine Whether or not to Request Transfer: The recommendation of the Social Services staff shall be reviewed by the ICWA Transfer Committee. The ICWA Transfer Committee shall be composed of the Social Services Director, Tribal Attorney, and Tribal Secretary, who shall decide by majority vote whether a request shall be made to transfer jurisdiction of the proceeding to the Chemehuevi Tribal Court. The ICWA Transfer Committee shall have the sole authority to determine whether or not the Tribe will request transfer of jurisdiction to the Tribal Court in a particular case. The Committee's decision in each case shall be reduced to writing and signed by all three Committee members, and shall be the Tribe's request or denial. The Committee may reconsider its decision not to request a transfer at any time new information is obtained, or if circumstances change. The Committee may request transfer of a proceeding for payment purposes only.

5.14.030 Requesting Transfer of Jurisdiction:

(1) Petition for jurisdiction to State Court. After a vote by the ICWA Transfer Committee, the Tribe shall prepare a petition for transfer of jurisdiction and shall present such petition to the state Court having jurisdiction over the Chemehuevi Child in question. The petition shall be presented by the Tribe's legal counsel or the Tribe's social services staff. The petition for transfer shall state that upon granting the petition for transfer, the Tribe shall petition the Tribal Court for acceptance of jurisdiction, and tribal jurisdiction shall be accepted unless affirmatively declined by order of the Tribal Court.

(2) Petition for acceptance of tribal Court jurisdiction. Concurrently upon petitioning the state Court for transfer of jurisdiction of a child custody proceeding of state Court involving a Chemehuevi child, the Tribe shall petition the Tribal Court for acceptance of jurisdiction of the proceeding. The petition for acceptance shall be in a form prescribed by the Court. Upon ruling affirmatively on the Tribe's petition for acceptance of jurisdiction, the Tribal Court shall enter an order accepting transfer of jurisdiction and an order directed to the state Court to transfer its files to the Tribal Court.

(3) Notice to the Standing of Other Parties. The Tribal Court shall give notice to all parties to the state Court proceeding of the filing of a petition for acceptance of transfer of jurisdiction, by certified mail. All parties to the state Court proceeding shall be granted standing to express their views as to whether transfer of jurisdiction should be accepted or declined. Notice to the state Court parties shall include the date, time and place for the petition for acceptance hearing, and a brief explanation of the subject of the hearing.

(4) Conditions upon Acceptance of Transfer of Jurisdiction. The Tribal Court may impose conditions for acceptance of transfer of jurisdiction of a state Court child custody proceeding. For example, if witnesses who can testify as to a Chemehuevi child's dependency or neglect are beyond the Tribal Court's subpoena and jurisdictional authority, the Tribal Court may conditionally transfer upon the state Court's willingness to enforce tribal subpoenas and order state employees to testify in the subsequent Tribal Court proceeding. If the conditions are imposed, the Tribal Court acceptance of jurisdiction order shall be presented to the state Court which originally transferred jurisdiction, for its review and reaffirmation.

(5) Declination of jurisdiction. The Tribal Court may decline to accept the transfer of jurisdiction order entered by the state Court if it finds good cause to deny such

transfer. Denial of transfer must be based upon clear and convincing evidence that such transfer would not be in the best interest of the Tribe, family, or child. In making its determination, the Court may examine, but not be limited to, the following factors:

(A) Emotional, cultural and family ties of the child and family;

(B) Should adjudication be necessary, the ability of necessary witnesses to appear in the Tribal Court.

(C) The ability of the Tribe to provide needed services, including but not limited to counseling, medical treatment, transportation, etc.

5.14.040 Procedure Upon Acceptance Of Transfer Of Jurisdiction: Proceedings after accepting jurisdiction of a state court child custody proceeding involving a Chemehuevi child shall take place pursuant to the applicable sections of this Ordinance. Upon acceptance of jurisdiction, the Tribal Court shall schedule a status hearing within thirty (30) days to conduct an initial review of the proceeding and to order appropriate changes in placement of the child or changes in the family's case plan, or enter other such orders as may be appropriate. Further proceedings shall taken place according to relevant sections of this Ordinance.

5.14.050 Petition For Transfer Of Jurisdiction By Party Other Than The Tribe:

(1) Party to File Petition. If the parent or custodian of a Chemehuevi child, or the child, through the guardian ad litem petitions a state Court in a child custody proceeding involving a Chemehuevi child for transfer of jurisdiction to the Tribal Court, such transfer shall not be effective until acceptance by the Tribal Court. It shall be the duty of the party petitioning the state Court for transfer of jurisdiction to file a petition for acceptance of jurisdiction with the Chemehuevi Tribal Court in the form prescribed by the Court.

(2) Petition to be Referred to Social Services Department; Tribe Granted Automatic Standing. Upon receipt of a petition for acceptance of jurisdiction from an individual, the Tribal Court shall refer the petition for an assessment by the Chemehuevi Social Services Department. The Court shall automatically grant standing to the Tribe as an interested party to express its view on whether the petition for acceptance of jurisdiction should be granted or denied. The social services staff shall have twenty (20) days from the date of referral by the Tribal Court to prepare a

written assessment and to submit such assessment to the Tribal Court for its consideration.

(3) Hearing Schedule; Order to be Filed with State Court.  
A hearing on the petition for acceptance of jurisdiction shall be scheduled at the earliest available time following submission of the Tribe's assessment. If transfer of jurisdiction is granted, the Tribal Court shall enter an order to that effect and shall file a copy of the order and a request that the state Court transfer its files with the state Court which transferred jurisdiction of the proceeding.

## Chapter 5.16

### JUVENILE OFFENDER PROVISIONS

#### Sections:

- 5.16.010 Taking A Minor Into Custody
- 5.16.020 Complaint
- 5.16.030 Warrants
- 5.16.040 Release Of Minor From Custody
- 5.16.050 Delivery Of Minor To Detention Or Shelter Care
- 5.16.060 Preliminary Inquiry
- 5.16.070 Place of Detention
- 5.16.080 Investigation And Recommendations By The Tribal Caseworker
- 5.16.090 Informal Adjustment Conference
- 5.16.100 Notice of Hearing
- 5.16.110 Summons
- 5.16.120 Hearing On A Petition (Adjudication)
- 5.16.130 Probation Revocation Hearing

5.16.010 Taking A Minor Into Custody: Law enforcement officers may take a minor into custody if:

(1) The officer has reasonable grounds to believe a delinquent act has been committed in his/her presence and that the minor has committed the delinquent act; or

(2) A warrant pursuant to this Code has been issued for the minor; or

(3) The officer has reasonable cause to believe a minor who is subject to the Tribal Court's jurisdiction is leaving the jurisdiction of the Court.

5.16.020 Complaint:

(1) Review and Signature on Complaint - The presenting officer shall review complaints.

(2) Form and Content - The form of complain shall be the form authorized pursuant to the rules of the Tribal Court. It shall state:

(A) The specific sections which give the Court jurisdiction; and

(B) The code provision which is alleged to have been violated; and

(C) The name, age and address of the minor who is subject to the complaint; and

(D) Any parties to the allegations; and

(E) The facts upon which the allegations are based, including the date, time and location at which the alleged facts occurred; and

(F) If the child is in detention or shelter care, the time and date placed in such care and reasons therefore.

(3) Assistance - The presenting officer may assist in the preparation of any complaint.

5.16.030 Warrants: Warrants shall be issued in accordance with the Rules of the Court.

5.16.040 Release Of Minor From Custody:

(1) Law Enforcement Officer A law enforcement officer taking a minor into custody shall:

(A) Give warnings and an explanation of due process rights required by this Ordinance or the Rules of the Court to any minor taken into custody prior to any questioning; and

(B) Release, immediately, the minor to the parent, guardian or custodian and issue a verbal counselor warning as may be appropriate; or

(C) Deliver, immediately, the minor to the tribal caseworker, detention, or shelter care as designated by the Court, or a medical facility if the minor is believed to need prompt medical treatment. If the minor is not delivered to the caseworker, the officer shall immediately notify the caseworker of the circumstances of the custody and location of the minor. All notifications required by this section shall be done immediately, notwithstanding weekends or holidays.

(2) Role of the Caseworker - The caseworker, immediately upon delivery of the minor for custody or notification of custody, shall review the need for detention or shelter care and shall:

(A) Notify immediately the parent, guardian or custodian notwithstanding the fact that custody was taken during the weekend or holidays;

(B) Release the minor to the parent, guardian or custodian unless detention or shelter care is inappropriate pursuant to this section; and

(C) In all cases, the minor shall be released to the parent, guardian or custodian within 72 hours of the time taken into custody unless the Court issues an order requiring that the custody continue.

(3) Exception A minor may not be released if:

(A) A Court order forbids release until further order of the Court;

(B) It appears the minor is in immediate danger of physical harm; or

(C) Reasonable cause exists to believe that the minor will run away from the Chemehuevi Indian Reservation.

5.16.050 Delivery Of Minor To Detention Or Shelter Care:  
If the parent, guardian or custodian cannot be found, and there is no relative to whom the minor may be released, or if circumstances pursuant to Section 5.06, et. seq. of this Code arise, the minor shall be delivered to a place of detention or shelter care designated by the Court and the tribal caseworker immediately shall make arrangements for the temporary care and custody of the minor.

5.16.060 Preliminary Inquiry:

(1) Purpose The purpose of a preliminary inquiry is to determine the best interest of the minor and the Tribe regarding any action to be taken. In determining the best interest of the minor, the Court shall examine whether probable cause exists to believe the alleged act was committed and whether continued detention or shelter care is necessary pending further proceedings.



(2) Time Limit

(A) Minor in Custody The preliminary inquiry shall be held within 72 hours of the beginning of detention or shelter care.

(B) Minor Released from Custody The preliminary inquiry shall be held within three (3) days of release of the minor from detention or shelter care.

(C) Minor Never in Custody The preliminary inquiry shall be held within ten (10) days of the filing of a complaint which is not dismissed.

(3) Presence of Minor's Parents, Guardian or Custodian. If the minor's parent, guardian or custodian is not present the Court shall determine what efforts have been made to notify and obtain the presence of the parent, guardian or custodian. If it appears further efforts are likely to produce the parent, guardian, or custodian, the Court shall recess for not more than twenty-four (24) hours and direct the presenting officer to make continued efforts to obtain the presence of a parent, guardian or custodian.

(4) Dismissal of Complaint and Release of Minor If the Court determines there is no probable cause to believe the minor has committed the alleged act, the complaint shall be dismissed without prejudice and the minor released.

(5) Release from Custody If the Court determines there is probable cause to believe the minor has committed the alleged act but the minor is not in need of detention or shelter care, the minor shall be released to the custody of the parent, guardian or custodian pending final disposition of the matter. Otherwise, the minor shall remain in custody until further order of the Court.

(6) Criteria for Detention or Shelter Care The Court may order detention or shelter care or order it to continue if the Court finds probable cause exists to believe the minor committed the alleged act, such detention or shelter care is in the best interest of the child and:

(A) The act is serious enough to warrant continued detention or shelter care; or

(B) There is reasonable cause to believe the minor will run away so that he or she will be unavailable for further proceedings;

(C) There is reasonable cause to believe that the minor will commit a serious act causing damage to a

person(s) or property; or

(D) There is reason to believe the child cannot be controlled by his or her parent, guardian or custodian.

(7) Plea and Disposition - A minor may admit or deny that he or she committed the alleged illegal act at this inquiry. If the minor denies committing the act, the Court shall proceed as directed in this Code. If the minor wishes to admit he or she committed the alleged act, the Court must first determine that:

(A) The minor has a full understanding of his or her rights under this Code; and

(B) The minor has full understanding of the consequences of admitting that he/she committed the alleged act; and

(C) The minor has not stated any facts that would be a defense.

If the Court determines the minor does not understand his/her rights, the consequences of admitting committing the alleged act or the minor has stated a defense, the Court shall order the case to proceed as a youth-in-need-of-care. If the Court determines the minor understands his/her rights, the consequences of admitting committing the alleged act, and has not stated a defense, the Court may proceed to the dispositional hearing as allowed by this Code.

5.16.070 Place of Detention:

(1) Place of Detention A minor alleged to be a juvenile offender may be detained, pending a Court hearing, in the following places:

(A) A foster care facility licensed or approved by the Tribal Social Services Department;

(B) A detention facility approved by the Tribal Social Services Department; or

(C) A private family home on the Reservation approved by the Tribal Social Services Department; or

(D) A facility outside the Reservation that has been approved either by the state in which it is located or the Tribal Social Services Department.

(2) Exceptions An alleged juvenile offender who is sixteen (16)

years of age or older may be detained in a jail or a facility used for the detention of adults only if:

(A) He or she is charged with an offense which would subject him or her to jail sentence if he or she were an adult;

(B) A facility in Section 5.16(g)(1) is not available or would not assure adequate supervision of the minor;

(C) Detention is in a cell separate but not removed from sight and sound of adults whenever possible and the cell is certified by the safety officer as safe for holding minors; and

(D) Adequate supervision is provided twenty-four (24) hours a day, and the minor is checked in person at least every fifteen (15) minutes.

5.16.080 Investigation And Recommendations By The Tribal Caseworker:

(1) Investigation The caseworker shall investigate within forty-eight (48) hours of the preliminary inquiry or release of the minor to determine whether the interests of the minor and the Tribe require that further action be taken.

(2) Recommendation Upon completion of the investigation, the caseworker may recommend to the presenting officer that no further action be taken; an informal adjustment hearing be set; a petition be filed; or a transfer petition be filed.

(3) Failure to Investigate Failure to make the investigation shall not be grounds for dismissal of proceedings against the minor.

5.16.090 Informal Adjustment Conference:

(1) When Allowed Within five (5) days of the preliminary inquiry, the presenting officer may hold an informal conference with the minor and minor's parent, guardian, custodian, spokesperson or legal representative to discuss alternatives to the filing of a petition if:

(A) The admitted facts bring the case within the jurisdiction of the Court;

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

(C) The minor and parent, guardian, custodian,

spokesperson or attorney for the minor consent to an informal adjustment with knowledge that the consent is voluntary.

(2) Alternatives As a result of the informal adjustment conference, the presenting officer may:

(A) Refer the minor and parent, guardian or custodian to a community agency for needed assistance;

(B) Order terms of supervision, calculated to assist and benefit the minor and parent, guardian or custodian and which regulate the minor's activities and those of the parent, guardian or custodian and which are within the ability of the minor to perform.

(C) Accept an offer of restitution voluntarily made by the minor; or

(D) File a petition pursuant to this Code if it appears no other alternative will be in the best interests of the minor and the Tribe.

(3) Written Agreement to Informal Adjustment

(A) Consent The presenting officer shall set out, in writing, the agreement and conclusions reached at the informal hearing conference. All parties shall sign the agreement and receive a copy of it.

(B) Time Limit An informal adjustment period shall not exceed six (6) months, except by order of the Court.

(C) Review The caseworker shall review minor's progress every thirty (30) days. If, at any time after initial thirty (30) day period, but before the end of the six (6) months, the caseworker concludes the agreement is not being followed, the caseworker shall recommend to the presenting officer to file a petition pursuant to this Ordinance.

(D) Approval by Presenting Officer The presenting officer shall have final authority to accept or reject a proposed informal adjustment conference. The presenting officer must accept or reject the agreement within five (5) days. All parties to the informal adjustment conference shall be told by the presenting officer at the beginning of the conference that he or she has the authority to accept or reject any agreement the parties reach.

(E) Notice of Informal Adjustment Agreement to the Court The presenting officer shall file a copy of the informal adjustment agreement with the Court.

(F) Disposition Upon Completion of Agreement If the informal adjustment agreement is followed and the caseworker does not recommend the filing of a petition during the informal adjustment period, the presenting officer shall dismiss the complaint against the minor with prejudice at the end of the agreement period.

(4) Use of Statements Made No written or oral statements made during the informal adjustment conference may be used against a minor or minor's parents if a petition is filed.

5.16.100 Petition: The petition shall be prepared as required by this Code and filed within three (3) days after it is determined or recommended that a petition should be filed.

5.16.110 Notice Of Hearing: Notice of a hearing shall be given to all parties as required by the Rules of the Court.

5.16.120 Summons: Summons shall be issued and serve as required by the Rules of the Court.

5.16.130 Hearing On A Petition (Adjudication):

(1) Time Limit A hearing on the petition shall be held within ten (10) days after the petition is filed.

(2) Purpose The Court shall conduct the hearing for the primary purpose of determining if a minor committed the alleged illegal act.

(3) Plea If the minor wishes to admit that he or she committed the alleged act, the Court shall proceed as required in Section 5.16(f) (7) of this Ordinance.

(4) Disposition If the Court finds the minor committed the alleged illegal act, the Court shall dispose of the matter in a manner least restrictive to the minor and consistent with the best interests of the minor and the Tribe as allowed in Section 5.08(e) of this Ordinance.

(5) Final Order A finding that the minor is a juvenile offender is a final order for purposes of appeal.

5.16.140 Probation Revocation Hearing: A minor alleged to have violated the terms of probation may be proceeded against in a probation revocation hearing. All procedures, rights and duties applicable to juvenile offender petitions shall be followed in a probation revocation proceedings.

Chapter 5.18

MISCELLANEOUS PROVISIONS

Sections:

- 5.18.010 Compulsory School Attendance
- 5.18.020 Emancipation
- 5.18.030 Establishment Of Parentage And Support
- 5.18.040 Appeal
- 5.18.050 Full Faith And Credit
- 5.18.060 Standards For Detention And Shelter Care Facilities

5.18.010 Compulsory School Attendance:

(1) Compulsory School Attendance: Responsibility: Any person who, because of age, is eligible to become a qualified student as defined by California State Law until attaining the age of sixteen (16) shall attend a public or private school or a state institution. A person shall be excused from this requirement if:

(A) The person is specifically exempted by law from the provisions of this section;

(B) The person has graduated from a high school;

(C) The person is at least fourteen (14) years of age and has been excused by the local school board or its authorized representative upon a finding that the person will be employed in a gainful trade or occupation or engaged in an alternative form of education sufficient for the person's educational needs and the person having legal custody and control consents:

(D) The person is excused from the provision of this section by the superintendent of schools of the school district in which the person is a resident with consent of the person having legal custody and control of the person to be excused and such person is under sixteen (16) years of age; or

(E) The person is judged, based on standards and procedures adopted by the California State Board of Education, to be unable to benefit from instruction because of learning disabilities or mental, physical or emotional conditions.

(2) A person subject to the provisions of this section shall attend school for at least the length of time of the

school year that is established in the school district in which the person is a resident.

(3) Any person having legal custody and control of a person subject to the provision of this section is responsible for the school attendance of that person.

(4) Certificates of Employment

(A) Full-Time School Attendance Not Required Any student subject to the provisions of this section attaining the age of sixteen (16) may be excused from full-time school attendance by issuance of a certificate of employment by the superintendent of schools of the school district in which the student is a resident or is employed. The certificate of employment shall only be issued upon satisfactory assurance to the superintendent of schools that the student will be definitely employed in a gainful trade or occupation.

(B) Contents of Certificate The certificate of employment shall contain the following information:

1. The name, age and residence of the person excused from full-time school attendance;
2. By whom the person is to be employed or is employed;
3. The last/class grade attended by the person; and
4. A statement that the person is excused from full time school attendance until the certificate is revoked.

(C) Expiration of Certificate If and when the employment certification is revoked or expires and the person is still under 18 years of age, then the compulsory school attendance laws will be reapplied to that person.

(5) Enforcement of Attendance Law/Penalty

(A) Responsibility for Enforcement Each local school board and each governing authority of a private school shall initiate the enforcement of the provisions of this Compulsory School Attendance Section for students enrolled in their respective schools.

(B) Procedure To initiate enforcement of the

provisions of the Compulsory School Attendance Section, a local school board or governing authority of a private school or their authorized representatives shall give written notice by certified mail to or by personal service on the parent, guardian or one having custody of the person subject to the provisions of the Compulsory School Attendance Section. Any person continuing to violate the provisions of the Compulsory School Attendance Section after receiving written notice as provided by this section shall be reported to the Tribal Court and shall be considered to be a neglected child or a child in need of supervision and thus subject to the provisions of this Ordinance.

(C) Failure to Enforce Any person failing his/her responsibility for initiating enforcement of subsection B of this section is guilty of neglect.

(D) Neglect by Parent, Guardian or Custodian After receiving notice (Subsection B), any parent, guardian or custodian of a person continuing to violate the provisions of the Compulsory School Attendance Section is guilty of neglect if the parent, guardian or custodian by act or omission, caused the continuing violation.

(6) Religious Instruction: Any student may be excused from school to participate in religious activities with the written consent of the student's parent, guardian or custodian.

5.18.020 Emancipation:

(1) Requirements: The Tribal Court may declare a child emancipated either pursuant to a petition or as a dispositional alternative if the child:

(A) Wishes to be free from parental control and protection and no longer needs that control and protection; or

(B) Is a minor-in-need-of-care or delinquent child as defined by this Ordinance; and all of the following exist.

(2) Requirement for Emancipation: Before a minor may be emancipated, he shall:

(A) Be sixteen (16) years of age; and

(B) Be self-supporting; and



(C) Understand the consequences of being free from parental control and protection; and

(D) Have an acceptable plan for independent living.

(3) Procedure for Emancipation

(A) Petition A minor may petition the Tribal Court for a declaration of full or partial emancipation. The petition shall be verified and shall state specific facts which will support a declaration of emancipation.

(B) Notice Before the petition is heard, notice shall be given to the minor's parent(s), guardian or custodian as required by this Ordinance.

(C) Findings If the Court finds that the requirements of this section are met, the Court may grant all or part of the petition, unless, after having considered all of the evidence, it finds that emancipation would not be in the best interest of the child.

(D) Declaration If the Court grants all or part of the petition, it shall immediately issue a declaration of emancipation.

(4) Purpose for Emancipation: An emancipated minor shall be considered an adult over the age of eighteen (18) for all purposes except that they shall remain subject to the laws requiring compulsory school attendance and to the continuing jurisdiction of the Tribal Court.

5.18.030 Establishment Of Parentage And Support:

(1) Child's Right to Support: The parents are jointly liable for the support of the child until he or she reaches eighteen (18) years of age, is emancipated, or the parental rights are terminated, notwithstanding the child's parents have never been married to each other.

(2) Establishing Parentage: The parentage of a child may be established by:

(A) A written acknowledgement by a parent that he is the father of or she is the mother of the child, and which is filed with the Tribal Court; or

(B) A judicial determination by the Tribal Court.

(3) Proceedings to Establish Parentage and Compel Support:

(A) When and By Whom Proceedings May be Filed:

1. Proceedings to establish parentage may be brought in Tribal Court at any time before the child is 18 years of age by a parent or by the minor acting through a guardian if the complainant parent dies or becomes disabled, or by the Tribe; and

2. Proceedings to compel support from a parent may be brought in Tribal Court at any time until a child reaches the age of eighteen (18) or becomes an adult through emancipation or marriage, and shall be brought by a complaining parent, by the minor if the complainant dies or becomes disabled or by the Tribe. Proceedings on behalf of a minor may be brought by the custodian of the minor.

(B) Form of Petition; Summons; Procedures

1. The petition shall be in the form approved by the Tribal Court and shall charge the person named as respondent with being the father or mother of the minor and demand that such person be compelled to support the minor;

2. Summons shall be issued and served as in other actions under this Ordinance; and

3. Procedure shall be the same as in other Tribal Court actions.

(C) Judgment The Court shall enter its order determining the child's parentage and support, if any, at the conclusion of the adjudicatory hearing.

(4) Starting and Completing Proceedings: Proceedings may be started before the birth of the child, but, unless the alleged father consents, trial will not be held until at least 15 days after the birth of the child.

(5) Rights of a Child Once Parentage is Established: After the parentage of a child is established, the child has the same rights of inheritance from the person who is establishes as a parent that a child born as a result of a lawful marriage has under tribal law.

5.18.040 Appeal:

(1) Procedure: Upon establishment of a Tribal Appellate

Court, an appeal may be taken from any order, decree or judgment of the Tribal Court under this Ordinance to said Appellate Court. Such appeal shall be taken in the same manner in which appeals are taken from judgments or decrees of the Tribal Court. Except as otherwise provided in this Ordinance, the appeal must be taken within one month from the entry of the order, decree or judgment appealed from.

(2) Stay Pending Appeal: Unless the Court says its order, the pendency of an appeal shall not stay the order or judgment appealed from in a children's case. Where the order or decree appealed from directs a change of legal custody of a child, the appeal shall be heard and decided at the earliest practical time. The name of the child shall not appear on the record on appeal.

5.18.050 Full Faith And Credit: The Court shall have full faith and credit to State and Tribal custody orders, where the state and tribe reciprocate in giving full faith and credit to Court Orders of the Chemehuevi Tribal Court, and where such orders are consistent with the public policy of the Tribe, the intent of the Indian Child Welfare Act, and the laws and customs of the Tribe.

5.18.060 Standards For Detention And Shelter Care Facilities:

(1) Rules and Regulations The Tribal Council shall adopt written rules and regulations governing the operation of detention and shelter care facilities.

(2) Content of Rules and Regulations The Rules and Regulations shall include but are not limited to the following items:

- (A) cleanliness standards;
- (B) heat, water and lights standards;
- (C) personnel standards;
- (D) visiting privileges;
- (E) occupancy standards;
- (F) provisions for medical and dental care;
- (G) provisions for food, clothing and other personal items

Section 3. Affective Date, Publication. The Secretary of the Tribal Council shall publish a summary of this Ordinance in

the Tribe's newsletter and a newspaper of general circulation on the Reservation. The Ordinance shall take effect thirty (30) days after its publication.

CERTIFICATION

The foregoing Ordinance was adopted at a regular meeting of the Chemehuevi Tribal Council held on \_\_\_\_\_, 1995, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

\_\_\_\_\_  
Matthew Leivas, Chairman

ATTACHED:

\_\_\_\_\_  
Irene Kellywood, Secretary



PETITIONER OR ATTORNEY (Name and Address): Lester J. Marston  Telephone No: _____ Fax: _____ Attorney for (Name): _____	
Tribal Court of the Chemehuevi Indian Tribe Street Address: Mailing Address: City and Code: Branch Name:	
Child's Name:	
<b>JUVENILE DEPENDENCY PETITION</b> (Title 9 Health & Safety, Chapter 5, §§5.04.010(A)(B))	Case No.: _____
<input type="checkbox"/> Rule 3 Original <input type="checkbox"/> §5.04.140 Modification <input type="checkbox"/> § 5.04.130 Rehearing	Related Cases (if any): _____

1. Petitioner on information and belief alleges the following:

a. The child named below comes within the jurisdiction of the juvenile court under the following subdivisions of Rule 3 of the Chemehuevi Tribal Code (check applicable boxes; see attachments for concise statements of facts):					
b. <u>Child's name</u>	<u>Age</u>	<u>Date of Birth</u>	<u>Sex</u>	<u>Rule 3 subdivision</u>	
1.				<input type="checkbox"/> (a) <input type="checkbox"/> (b) <input type="checkbox"/> (c) <input type="checkbox"/> (d)	
2.				<input type="checkbox"/> (a) <input type="checkbox"/> (b) <input type="checkbox"/> (c) <input type="checkbox"/> (d)	
3.				<input type="checkbox"/> (a) <input type="checkbox"/> (b) <input type="checkbox"/> (c) <input type="checkbox"/> (d)	
4.				<input type="checkbox"/> (a) <input type="checkbox"/> (b) <input type="checkbox"/> (c) <input type="checkbox"/> (d)	

c. Mother's name: <input type="checkbox"/> unknown Address: <input type="checkbox"/> unknown	d. Father's name: <input type="checkbox"/> unknown Address: <input type="checkbox"/> unknown <input type="checkbox"/> presumed <input type="checkbox"/> alleged
e. Other (state name, address, and relationship to child):  <input type="checkbox"/> No known parent or guardian resides within this state. This adult relative lives on the Chemehuevi Indian Reservation or is closest to this court.	f. Other (state name, address, and relationship to child):  <input type="checkbox"/> No known parent or guardian resides within this state. This adult relative lives on the Chemehuevi Indian Reservation or is closest to this court.
g. Prior to intervention, child resided with: <input type="checkbox"/> Father <input type="checkbox"/> Mother <input type="checkbox"/> Other (state name, address, and relationship to child):	h. Child is <input type="checkbox"/> not detained <input type="checkbox"/> Detained Date and time of detention: Current place of detention (address):  <input type="checkbox"/> Relative <input type="checkbox"/> Shelter/foster care <input type="checkbox"/> Other

i.  Child \_\_\_\_\_ is an enrolled member of the Chemehuevi Indian Tribe.

j.  Children are eligible for membership in the Chemehuevi Indian Tribe.

2. Petitioner requests that the court find these allegations to be true.

I declare under penalty of perjury under the laws of the Chemehuevi Indian Tribe that the foregoing is true and correct.  
Date: March , 2004

\_\_\_\_\_  
(Type or print name)  
Address and telephone number:

\_\_\_\_\_  
(Signature of Petitioner)

Number of pages attached: 1

Other children are listed on Additional Children Attachment

Law Offices Of

**RAPPORT AND MARSTON**

An Association of Sole Practitioners

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(707) 462-6846  
FAX 462-4235

July 20, 2005

Dennis Tilton  
Deputy County Counsel  
Sheriff's Legal Counsel  
County of San Bernardino  
Office of the County Counsel  
385 North Arrowhead Avenue  
San Bernardino, CA 92415-0140

RE: Our File No. 80.5.9.1

Dear Dennis:

Thank you for your letter of July 1, 2005, offering to spearhead the establishment of a "consortium of public and private agencies and tribal representatives to meet periodically and confer on any issue of concern that might impact them or their members or employees with respect to services provided on Reservation lands or elsewhere within Indian country" within San Bernardino County.

The Chemehuevi Tribal Council has a meeting scheduled on Saturday, July 30, 2005. At that meeting, I will present your letter to the Tribal Council and find out if the Tribal Council is interested in pursuing the establishment of the consortium. After I have had an opportunity to meet with the Council and discuss this issue with them, I will get back to you the first week in August and let you know what the Tribal Council's wishes are in this regard.

Finally, I have forwarded a copy of the fully executed Intergovernmental Agreement Between the Chemehuevi Indian Tribe and the San Bernardino County Sheriff's Department to the Tribe for its records. I was glad to see that you presented the Agreement at the California Attorney General's Office of Native American Affairs' Tribal and State Domestic Violence Prevention Summit in June. It sounds to me like your presentation was a great success.



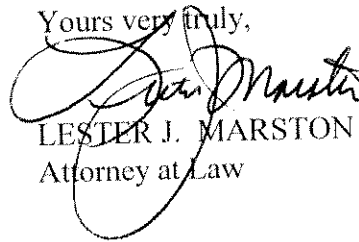


**Dennis Tilton, Deputy County Counsel, Sheriff's Legal Counsel  
County of San Bernardino  
July 20, 2005**

**Page 2**

Once again, on behalf of the Chemehuevi Indian Tribe, I would like to thank you for all the hard work that you have put in to make this Agreement a reality. Hopefully, this will be the first of many agreements between the Tribe and the County in which the parties work together cooperatively to better serve the residents of San Bernardino County who reside, work, and visit the Chemehuevi Indian Reservation.

Yours very truly,

A handwritten signature in black ink, appearing to read "Lester J. Marston", written over the typed name and title.

LESTER J. MARSTON  
Attorney at Law

LJM/cf

cc: Charles Wood, Chairman, and Members of the Chemehuevi Tribal Council

