

# Tulalip Tribal Youth Code § 81

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## 81.1. GENERAL PROVISIONS

### 81.1.1. PURPOSE AND POLICY.

#### A. Purpose.

1. Indian children are the most valued resources of the Tulalip Tribes and constitute the future of the Tribes. The Indian family and home are important for the support of Indian children.
2. Maintaining Indian children in an Indian home, and especially in the home of their natural parents, is a major purpose of this Ordinance. All actions authorized by this Ordinance are to be taken with this purpose as the first priority of the Tribes in enacting this Ordinance.
3. Therefore, be it enacted by the Board of Directors (hereafter "**Board**") of the Tulalip Tribes, pursuant to Article VI, Sec. 1., K., L., O., and P. of the Constitution of the Tulalip Tribes, that this Ordinance 81 shall be the law of the Tribes from the date of Secretarial approval.

#### B. Policy.

In child welfare matters, it shall be the policy of the Tulalip Tribes to:

1. Protect the best interests of Tulalip children by:
  - a. Preventing the unwarranted breakup of Tulalip families;
  - b. Maintaining the connection of Tulalip children to their families, the Tribe, and the Tribal Community, when appropriate; and
  - c. Promoting the stability and security of the Tribe by establishing Tribal standards for appropriately handling situations involving youth-in-need-of-care and other proceedings involving Tulalip children;
2. Preserve the opportunity for Tulalip children to learn about their distinct and unique culture and heritage, and to become productive adult members of the Tulalip Tribal community, by ensuring that Tulalip children have a meaningful opportunity to experience their culture on a permanent basis;
3. Encourage, guide, assist, and compel if necessary, the parent, guardian, or custodian of a Tulalip child to provide a safe and nurturing environment for the child;
4. Establish a judicial process whereby the Tribe is able to protect the health, welfare, and safety of Tulalip children, and other children within its jurisdiction, which process may include the provision of substitute care and supervision for children who are in need of such care, and provision of services to parents seeking return of their children from substitute care;
5. Ensure Tulalip children reside in an adequate physical and emotional environment that will protect and promote the health, safety, and development of all Tulalip children; provide child welfare services, in accordance with the traditions, law, and cultural values of the Tribe, to Tulalip children and their families.

**81.1.2 DEFINITIONS.** Terms under this Ordinance shall be liberally construed so as not to limit the jurisdiction of the Court over Tulalip Tribal children, and to facilitate the authority of the Court to act to protect the interests of Tulalip Tribal children and their families. When interpreting terms not defined by this Ordinance, the Court shall take into consideration Tribal laws, customs, and traditional child-rearing practices. Unless in conflict with applicable tribal law, terms not specifically defined in this Ordinance shall be defined according to their normal usage, or as defined in the Indian Child Welfare Act (25 U.S.C. §1901-1963); Title IV-B and Title IV-E of the Social Security Act (42 U.S.C. §620 et seq. and 42 U.S.C. §670 et seq; respectively); the Adoption and Safe Families Act (ASFA) (P.L. 105-89); the BIA Guidelines to the federal law; and any applicable federal law.

**Abandonment:** The failure of the parent, legal guardian, or custodian, without good cause, to provide reasonable support for, and to maintain other contact with a child for a substantial period of time.

**Age of Majority:** Eighteen (18) years of age or older.

**Adjudication:** The process by which the allegations in the Petition are found to be true, or not true, by the Judge, in the course of an evidentiary hearing.

**Adult:** A person eighteen (18) years of age or older, or a person emancipated by order of a court of competent jurisdiction, or by legal marriage.

**beda?chelh:** The Tribe's Social Service Department charged with protecting Tribal children and serving their families.

**Best Interests of the Child:** The preservation of the connection, or the creation of such a connection if one does not currently exist, between a Tulalip child and the child's culture, family, and Tribe in a stable setting where the usual and special needs of that child may be met; where the child is secure and safe; where the child is emotionally, physically, socially, and spiritually healthy, and academically enriched.

**CASA:** A Court-Appointed Special Advocate.

**Case Plan:** A written document for each child under the jurisdiction of the Court, prepared by beda?chelh, and with the family whenever possible. The plan shall include a detailed description of the services to be provided to the family along with the duties, responsibilities and consequences regarding both beda?chelh and the family. The plan must be designed to reunite the family, and may contain, if appropriate, a concurrent, alternative permanent plan for the child in the event the child does not return to parental care.

**Case Review:** A procedure for periodically reviewing the status of each child in foster care in accordance with the requirements of applicable law or Tribal Court order.

**Child:** A person who is less than eighteen (18) years old who has not been emancipated by order of a court of competent jurisdiction or by legal marriage.

**Contempt of Court:** Any willful disobedience of, or interference with, any order of the Court.

**Custodian:** Any person who has physical custody of a child under Tribal law or custom, or under state law, or to whom temporary physical care, custody, and control has been transferred by the child's parent, and who is providing food, shelter, and supervision to the child.

**Days and Hours:** Unless otherwise defined, reference to hours or days shall mean actual hours or days, excluding Saturdays, Sundays, and Tribal holidays.

**Dependency Case:** A case in which the child is alleged to be, or has been found by the Court to be, a "Youth-in-Need-of-Care."

**Dependent Child:** A child who has been found by the Court to be a "Youth-in-Need-of-Care."

**Disposition:** The determination by the Court of a plan for the child, which plan includes, but is not limited to, legal custody, physical custody, placement, and services to the child, parents, and family.

**Domicile:** A person's legal home or main residence in which the person resides or to which the person intends to return. The domicile of a child is generally that of the custodial parent or legal guardian.

**Duress or Coercion:** Force which overcomes resistance, or a threat, express or implied, that places another person in fear of death or physical injury to himself or herself or another person.

**Emotional Maltreatment:** Emotional maltreatment causes impaired psychological growth and development of the child. Both community values and professional expertise should be considered when deciding whether emotional maltreatment has occurred. Some indicators of emotional maltreatment are:

1. The child's social relationships are seriously impaired: very low self-esteem, a consistent pattern of emotional difficulties such as listlessness, apathy, depression, and self-deprecating remarks;
2. Serious inability of the child to respond appropriately to the normal behavior of adults (e.g. the child cowers or ingratiates himself to adults);
3. Rejection: Refusal to accept the child;
4. Ignoring: The parent deprives the child of essential responsiveness which stifles emotional growth and development of the child;
5. Ridicule/Terrorizing: Verbal assaults creating a climate of fear, bullying the child, name calling, destroying the child's possessions, or attacking beloved people or pets;
6. Isolating: Cutting a child off from normal social experiences, preventing a child from forming friendships, or locking a child out of the home;

7. **Corrupting:** Teaching a child socially deviant behavior such as rewarding aggression, delinquency, or sexually promiscuous behavior;
8. Penalizing a child for positive, normal behavior; or
9. Discouraging the attachment between a caregiver and infant; failure to thrive and physical abuse may follow.

**Family Unity Model:** The model used by the Tribe's Social Service Department that is designed to empower families by making them an intricate part of the decision making and planning process. This model promotes self-sufficiency and positive lifestyle choices. In this process, both the family and service providers identify the needs of the family and develop a case plan that recognizes and builds on their strengths.

**Father:** See "Parent."

**Foster Care:** Substitute family care for a child who has been voluntarily or involuntarily removed from parental care.

**Guardian:** See "Legal Guardian".

**Guardian ad-litem:** An adult appointed by a court of competent jurisdiction to represent a child, for the protection of the best interests of the child, in any proceeding in which the child may be a party.

**Incompetent:** A person who has been found by a court of competent jurisdiction to be mentally or physically incapable of caring for him/herself.

**Indian:** Any member or person eligible for membership in a federally recognized Indian Tribe, band or community, or an Alaska Native who is a member of a regional corporation as defined in 43 U.S.C. § 1606.

**Indian Child Welfare Program:** See "beda?chelh".

**Indian Youth:** A youth less than eighteen (18) years of age, who is either enrolled in an Indian tribe or: (1) Eligible for enrollment in an Indian tribe; and (2) the biological child of a person who is enrolled or is eligible for enrollment in an Indian tribe.

**Intervener:** A person, not the child or parent in a case, who has been allowed by the Court to intervene and has been granted certain rights.

**Legal Guardian:** A person, not the child's parent, who is legally vested with the power and responsibility to care for the child and/or the child's property.

**Mother:** See "Parent".

**Neglect:** This term includes:

1. A child who is not receiving the food, clothing, shelter, medical care, education, or supervision needed for his or her well-being or development;
2. An infant who is failing to thrive;
3. A child left with a babysitter who is intoxicated, irresponsible, or too young;
4. A child who lacks parental control because of the habits or fault of the parent(s), guardian, or custodian;
5. A child who is doing the work of a parent in running a household because the parent refuses or fails to act as a parent or forces the child to do the work of the parent;
6. A child who is exposed to a dangerous situation as a result of parental negligence;
7. A child whose parent(s) misuses benefits intended for the child, such as selling or squandering food stamps or commodities;
8. An unborn or nursing child whose mother is using alcohol or other drugs to the extent that the fetus or child may be endangered;
9. An unborn child whose mother is not receiving adequate prenatal care;
10. A child who is allowed to be out after any curfew the Tribes establishes;
11. A child who is a runaway;
12. A child who is fourteen (14) years of age or under and has more than five (5) unexcused absences from school in a quarter;
13. A child who is expected to provide prolonged and unsupervised babysitting services; or
14. A child who has been a passenger in an automobile, boat, or other motorized vehicle driven by an intoxicated person, with the knowledge and approval of the child's parent(s), guardian, or custodian.

**Parent:** Includes: a biological or adoptive mother, legal or adoptive father of the child or an unwed father whose paternity has been legally acknowledged or who is otherwise established as a legal father but does not include persons whose parental rights to the child have been terminated. A married man cohabiting with his wife, the mother, is irrebuttably presumed to be the legal father of a child conceived during the marriage, absent DNA or blood evidence to the contrary. Unless DNA testing, blood evidence or legal documents establish otherwise, children born to a married couple are presumed to be the biological off spring of the husband. A married man not cohabiting with his wife, the mother, is presumed to be the legal father of a child conceived during the marriage; but that presumption can be rebutted.

**Parental Care:** Care of a child by a parent, guardian, or custodian.

**Party:** The parent, child, or Tribe to whom certain rights accrue, including, but not limited to, with certain restrictions and limitations: the right to be notified of proceedings; to retain counsel or, in some cases, to secure Court-appointed counsel or Court-approved spokesperson; to appear and present evidence; to call, examine, and cross-examine witnesses; the unlimited or restricted right to discovery and the inspection of the records; and the right to request a hearing or appeal a final order.

**Physical Abuse, includes, but is not limited to:**

1. Any bruising, welting, abrasion, lesions, burns, broken bones, or other damage to the body, not clearly caused by pure accident;
2. A child who has been given inappropriate food, drink, or drugs, or a child who is suffering from malnutrition, including but not limited to,
3. Inappropriate punishment;
4. Any striking, slapping;
5. Any assault.

**Relative:** Any person who is the child's parent, step-parent, grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or anyone deemed by the court to have established a significant familial-type relationship with the child.

**Review:** See "Case Review".

**Sexual Abuse:**

1. Contacts or interactions between a child and an adult when the child is being used for the sexual stimulation of the perpetrator or another person;
2. Sexual abuse may also be committed by a person under the age of eighteen (18) when that person is either significantly older than the victim or when the perpetrator is in a position of power or control over the victim child;
3. The exposure of the perpetrators genitals in the presence of a child, or any other sexual act, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose;
4. Obscene telephone calls, jokes, peeping, or sexual propositions;
5. Child pornography or sexual positioning for photos;
6. Forcing a child to watch a sexual act or sexual violence;
7. Unwanted hugs, kisses, pinching, or tickling;
8. French kissing, handling genitals, masturbation, or mouth to genital contact;
9. Oral, anal, or vaginal rape; or
10. Sexual maiming or sexual bondage.

**Shelter Care:** A home or other living facility used as a short-term living place for a child pending return to the child's family, or placement in foster care or other out-of-home care.

**Significant Familial-Type Relationship:** An ongoing personal relationship with the minor child that began at least (12) twelve months before the filing of the motion to intervene, or since the birth of the child, if the child is less than (12) twelve months old, and has continued to the filing date, and in which the moving party has

1. Had physical custody of the child or has resided in the same household as the child;

2. Supplied, or otherwise made available to the child, food, clothing, shelter and incidental necessities and provided the child with necessary care, education and discipline; and
3. Through interaction, companionship, interplay and mutuality, helped fulfill the child's psychological needs for a parent as well as the child's physical needs.

**Spokesperson:** A person approved by the Court to speak for a parent or an older child, or to speak to the best interests of a younger child.

**Spouse:** A person who is married to another under the law and/or customs recognized by The Tulalip Tribes, but does not include a person who is living separate and apart from his or her spouse and who has filed, in an appropriate court, a petition for legal separation or dissolution of marriage.

**Tribes:** The Tulalip Tribes of Washington.

**Tribes' service area:** Area within the exterior boundaries of the Tulalip Indian Reservation.

**Tribes' Social Services Department:** See "beda?chelh".

**Tribal Child:** See "Tulalip Tribes Child."

**Tulalip Tribes Child:** Any child who is an enrolled member of, or is eligible for enrollment in, The Tulalip Tribes of Washington.

**Tulalip Indian Reservation:** The territory established as the Tulalip Reservation by the Treaty of Point Elliot, January 22, 1855 (12 Stat. 927) and by the Executive Order of December 23, 1873, and other such lands as may be hereby added thereto under any law of the United States, except as otherwise provided by law.

**Youth-in-Need-of-Care:** A child who has been found by the Tribal Court to be abandoned, abused, or neglected, or is otherwise in need of Tribal services to prevent the break-up of the child's family.

### 81.1.3 TRIBAL COURT JURISDICTION.

**A.** The Tulalip Tribal Court shall have jurisdiction over any proceeding arising under this Ordinance and actions arising under the customs and traditions of the Tulalip Indian Tribal community affecting family or child welfare which involve:

1. Any Indian youth who resides or is domiciled on the Tulalip Reservation;
2. Any youth who is a member of, or is eligible for membership in, the Tulalip Tribes, regardless of the youth's residence or domicile; and
3. Any Indian youth who has been placed in temporary care on the Tulalip Reservation or in any care facility licensed by the Tribes for placement of an Indian youth;
4. Or whose parent is an enrolled member.

**B.** The Tulalip Tribal Court shall have jurisdiction over adults in furtherance of its powers under this code. The Court may issue orders as are necessary for the welfare of youths and families.

**C.** Whenever state, federal, or other tribal courts have jurisdiction over any of the matters provided for in this code, the Court shall have concurrent jurisdiction over the same matters, to the extent consistent with federal law.

**D.** The limitations on jurisdiction contained in this section are not intended to reflect the Tribes' view as to the legally permissible limits of jurisdiction.

### 81.1.4 TRANSFER OF JURISDICTION

**A. Policy.** It shall be the policy of the Tribes to request transfer of a Tulalip child who is the subject of a state court child custody proceeding, pursuant to the Indian Child Welfare Act (ICWA), except when good cause exists to the contrary.

**B. Assessment Procedure for Transfer of Jurisdiction.**

1. Assessment of Case by Social Services Department; Recommendation: Upon receiving notice that a Tulalip child is involved in a child custody proceeding subject to the ICWA, beda?chelh shall prepare a written assessment of the family's situation, and a written determination as to whether the case should be transferred from state court to Tribal Court. If a question exists as to whether the

Tribal Court will accept jurisdiction of a particular child custody proceeding, beda?chelh may request an advisory opinion from the Tribal Court, before petitioning the courts for transfer of jurisdiction.

2. Factors to be Considered in Determination: beda?chelh's determination shall consider, among other factors, the following:
  - a. age of the child;
  - b. circumstances of the family;
  - c. any special needs of the child; location of the family;
  - d. whether the state is attempting to reunite the family;
  - e. availability of state and/or Tribal services to meet the family's particular needs;
  - f. availability of suitable Tulalip Tribal homes for placement of the child;
  - g. whether state and federal financial assistance for the care of the child will continue if jurisdiction is transferred;
  - h. and any other relevant factors.

**C. Petition for Transfer of Jurisdiction by Beda?chelh:**

1. Petition for Transfer of Jurisdiction: beda?chelh may file a Petition for Transfer of Jurisdiction and may present such Petition to the state court having jurisdiction over the Tulalip child. The Petition shall state that beda?chelh has concurrently petitioned the Tribal Court for acceptance of jurisdiction, and that Tribal jurisdiction will be accepted unless affirmatively declined for good cause by order of the Tribal Court.
2. Petition for Acceptance of Tribal Court Jurisdiction: Concurrently upon petitioning the state court for transfer of jurisdiction, beda?chelh shall Petition the Tribal Court for Acceptance of Jurisdiction. The Petition shall state:
  - a. That beda?chelh has concurrently petitioned the state court for transfer of jurisdiction;
  - b. The full name, residence, date and place of birth, sex of the child, with attached documentary proof of the date and place of birth of the child;
  - c. The names of the persons with whom the child has lived, the residences at which the child has lived, for the previous year, and the length of time the child has lived with each person and at each residence;
  - d. Documentary proof of the child's membership status in the Tribe;
  - e. The names and residences of the child's legal parents, guardians, or custodians. In addition, the names and residences of putative fathers or step-parents, if any;
  - f. The status of the case in state court;
  - g. A statement setting forth beda?chelh's assessment and recommendations regarding transfer of jurisdiction; and
  - h. Any other information relevant to transfer.
3. Notice of Hearing on a Petition for Acceptance of Jurisdiction: The parties to the Petitions shall be personally served at least ten (10) **calendar** days before the hearing with a certified copy of the Petitions, and with Notice of Hearing on a Petition for Acceptance of Jurisdiction that shall contain the following:
  - a. a statement to the effect that the rights of the parent or parents may be affected, that the child custody proceeding may be transferred from state court to Tribal Court, and
  - b. that if the parent or parents fail to appear at the time and place specified in the Notice of Hearing on a Petition for Acceptance of Jurisdiction, the state and/or Tribal Courts may order transfer or acceptance of jurisdiction, and take any other action that is authorized by law.

4. Service of the Notice of Hearing on Petition to Transfer Jurisdiction
  - a. Service of the Notice of Hearing on Petition to Transfer Jurisdiction shall be personally served on:
    - i. The child's parent, current guardian, or custodian;
    - ii. The child who is the subject of the petition to transfer jurisdiction; and
    - iii. The court to which the transfer of jurisdiction is being requested.
    - iv. If the child is not enrolled in The Tulalip Tribes, any tribe the child is enrolled in or is eligible for enrollment.
  - b. If any party who is required to be personally served is outside the Tribes' service area, service shall be by certified mail, return receipt requested, or by any other means reasonably designed to give notice.
  - c. Service shall be made by any person over the age of eighteen (18) and is not a party to the proceedings.

**D. Petition for Transfer of Jurisdiction by Party Other than Beda?chelh:**

1. Party to File Petition: Any parent, guardian, custodian, or child, may file a Petition for Transfer of Jurisdiction and concurrently petition the Tribal Court for acceptance of jurisdiction.
2. Petition for Transfer of State Court Jurisdiction: The party may prepare a Petition for Transfer of Jurisdiction and may present such Petition to the state court having jurisdiction over the Tulalip child. The Petition shall state that the party has concurrently petitioned the Tribal Court for acceptance of jurisdiction, and that Tribal jurisdiction will be accepted unless affirmatively declined for good cause by order of the Tribal Court.
3. Petition for Acceptance of Tribal Court Jurisdiction: The party shall concurrently prepare a Petition for Acceptance of Jurisdiction. The Petition shall state:
  - a. That the party has concurrently petitioned the State Court for transfer of jurisdiction;
  - b. The full name, residence, date and place of birth, sex of the child, with attached documentary proof of the date and place of birth of the child;
  - c. The names of the persons with whom the child has lived, the residences at which the child has lived, for the previous year, and the length of time the child has lived with each person and at each residence;
  - d. Documentary proof of the child's membership status in the Tribe;
  - e. The names and residences of the child's legal parents, guardians, or custodians. In addition, the names and residences of putative fathers or stepparents, if any;
  - f. The status of the case in state court;
  - g. A statement setting forth the reasons the party is petitioning for transfer of jurisdiction; and
  - h. Any other information relevant to transfer of jurisdiction
4. Notice of Hearing on a Petition for Acceptance of Jurisdiction: The parties to the Petitions shall be personally served at least ten (10) **calendar** days before the hearing with a certified copy of the Petitions, and with Hearing on a Petition for Acceptance of Jurisdiction that shall contain the following:
  - a. a statement to the effect that the rights of the parent or parents may be affected, that the child custody proceeding may be transferred from state court to Tribal Court, and
  - b. that if the parent or parents fail to appear at the time and place specified in the Notice of Hearing on a Petition for Acceptance of Jurisdiction, the state and/or Tribal Courts may order transfer or acceptance of jurisdiction, and take any other action that is authorized by law.
5. Service of the Notice of Hearing on Petition to Transfer Jurisdiction:

- a. Service of the Notice of Hearing on Petition to Transfer Jurisdiction shall be personally served on:
    1. The child's parent, current guardian, or custodian;
    2. The child who is the subject of the petition to transfer jurisdiction; and
    3. The court to which the transfer of jurisdiction is being requested.
    4. If the child is not enrolled in The Tulalip Tribes, any tribe the child is enrolled in or is eligible for enrollment.
  - b. If any party who is required to be personally served is outside the Tribes' service area, service shall be by certified mail, return receipt requested, or by any other means reasonably designed to give notice.
  - c. Service shall be made by any person over the age of eighteen (18) who is not a party to the proceedings.
6. Petition to be Referred to beda?chelh; Program Granted Automatic Standing: Upon receipt of a Petition for Acceptance of Jurisdiction from an individual, the Court shall refer the Petition for an assessment by beda?chelh. The Court shall automatically grant standing to beda?chelh as an interested party to express its views on whether the Petition for Acceptance of Jurisdiction should be granted or denied. beda?chelh shall have twenty (20) **calendar** days from the date of referral by the Court to prepare and submit a written assessment and recommendation to the Tribal Court.

**E. Transfer Hearing:** Except by order of the Court for good cause shown, the Court shall set a hearing on a Petition for Acceptance of Jurisdiction within thirty (30) **calendar** days of the filing of the Petition; however, the hearing shall be held no later than fourteen (14) **calendar** days following an order from the state court transferring jurisdiction.

**F. Transfer of Jurisdiction:** In a hearing to determine whether or not to accept a transfer of jurisdiction from state court to Tribal Court, the standard of proof shall be clear and convincing evidence that the court has jurisdiction and that transfer of jurisdiction is in the best interest of the child.

**G. Order Accepting Jurisdiction:** Upon receipt of a state court order transferring jurisdiction to Tribal Court and, pursuant to a hearing, ruling affirmatively on the Tribe's Petition for Acceptance of Jurisdiction, the Tribal Court shall enter an Order Accepting Jurisdiction and an order directed to the state court to transfer its files to the Tribal Court.

**H. Order Denying Jurisdiction:** Upon denial of Tribe's Petition for Acceptance of Jurisdiction the Court shall enter an Order Denying Jurisdiction, and setting forth written findings in support of the denial, and shall forward a copy of the order to the state court. In making its determination the Court may consider, but is not limited to, the following factors:

1. Emotional, cultural, and family ties of child and family;
2. The ability of necessary witnesses to appear in the Court; and
3. The ability of the Tribe to provide needed services, including but not limited to counseling, medical treatment, transportation, etc.

**I. Subsequent Hearings:** Upon acceptance of jurisdiction, the Tribal Court shall set further hearings as necessary.

**J. Final Order:** An Order Accepting or Denying Jurisdiction is a final order for the purpose of appeal.

#### **81.1.5 DUTY TO INVESTIGATE AND REPORT ABUSE AND NEGLECT.**

**A. Basis of Investigation and Report:** Beda?chelh shall immediately investigate all allegations of abuse, neglect, and abandonment, and if appropriate, shall proceed according to the provisions of this Ordinance.

**B. Persons Required to Report:** Persons who have reasonable cause to suspect that a child has been abused, neglected, or abandoned shall report the matter to the Tribal or other governmental agency responsible for investigating allegations of abuse or neglect. Those persons required to report suspected abuse or neglect include any physician, physician's assistant, psychologist, psychiatrist, mental health counselor, nurse, nurse's aide, nurse practitioner, midwife, dentist, dental assistant, hygienist, optometrist, or any 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; peace officer or other law enforcement official; judge, attorney, court counselor, clerk of the Court, or other judicial system official. The Tribal Court may issue sanctions against individuals who are required, but fail to report abuse in accordance with this ordinance.

**C. Other Persons Reporting:** Any person may make a report of suspected abuse or neglect to the proper Tribal officials.

**D. Anonymity:** Unless required to report by applicable law, persons reporting alleged incidents of child abuse, neglect, or abandonment may remain anonymous if the Court so determines that justice will not be compromised by anonymity.

**E. Immunity from Liability:** All persons or agencies reporting in good faith, and with reasonable grounds, known or suspected instances of abuse or neglect, shall not be subject to civil liability or criminal prosecution in Tribal Court.

#### **81.1.6 RECORDS MAINTENANCE AND PROTECTION.**

**A. Court Records:** A record of all hearings under this Ordinance shall be made and preserved.

**B. Secure Placement:** All Court records included within this section shall be kept in a secure place by the Tribal Court Administrator, 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.

**C. Destruction of Records:** All records of the child shall be sealed and, excepting adoption records, may be destroyed by order of the Court absent good cause not to do so. The Court shall notify the Tribal Court of its intent to destroy records, and the Tribal Court shall notify the Court of its objections, if any.

#### **81.1.7 CONFIDENTIALITY OF COURT RECORDS AND PROCEEDINGS.**

**A. Confidentiality:** All Court records, files, documents, and other related information associated with a dependent child proceeding including, but not limited to: the acknowledgment that a case is before the Court; the release of any identifying information (ie. the names of children, families, or witnesses involved in proceedings); and the substance of a hearing, order, or Court file, are confidential and are not accessible for public inspection except as follows:

1. By a law enforcement agency or child protective agency for the purpose of subsequent investigation of child abuse;
2. By the attorney of record for the child for use in a dependency proceeding involving the child;
3. By the child, the child's parent or legal guardian, or by the attorney of record, for use in a dependency proceeding involving the child;
4. By Court personnel;
5. By Court approved intervenors.

**B. Notice by Publication:** In accordance with this Section, when providing service by publication, the names of the children in the matter shall not be disclosed. Only the child's initials shall be published.

**C. Closed Courtroom:** Hearings and proceedings under this code shall be private and closed.

Only those persons the Court determines to have a legitimate interest in the proceedings may be present.

**D. Contempt of Court:** No Court records or other confidential information shall be viewed or disseminated except as provided herein. Any person who receives or views documents or other information pursuant to this provision shall maintain the confidentiality of such information. Failure to abide by this restriction shall constitute contempt of Court.

**81.1.8 MEDICAL EXAMINATIONS.** The Court may order a medical, dental, psychological, psychiatric, or other professional examination of a child or any other party or person before the Court if it is determined pursuant to a hearing that the party's or person's medical, dental, psychological, or psychiatric health are relevant to the issues before the Court. Such examination shall be paid for by the parties if they can afford it, and if not, by the Tribe, provided that the Tribe shall not be required to pay for such examinations and/or evaluations unless the funds have been appropriated to do so.

**81.1.9 PAYMENT OF FEES AND EXPENSES.** There shall be no fee for 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 paid when provided for by resolution of the Tulalip Board of Directors.

**81.1.10 RIGHTS OF PARTIES.**

**A.** Except as otherwise expressly provided in this title, all parties, and their counsel, or other persons they have selected to present them, shall be entitled to the following rights in every proceeding under this title:

1. A statement by the Court to the youth and his or her parent, guardian, or other custodian that they have the right under this ordinance to have a lawyer or other persons they have selected to represent them at the proceeding, but that they may have to pay for such representation.
2. If a party appears at a proceeding without counsel, the Court shall advise the party of the right to request a continuance of the proceeding in order to seek counsel, and upon such request, the Court may continue the proceeding for a reasonable period of time.
3. If it appears that the party cannot pay for counsel, the Court shall inform him or her of any available services which provide representation.
4. The opportunity to introduce, examine, and cross-examine witnesses.
5. The opportunity to discover, offer, and inspect evidence.
6. The opportunity to present arguments and statements.
7. A party need not be a witness against him/herself.

**B.** There is no right to trial by jury during any proceeding conducted pursuant to this title.

**81.1.11 PARENTAL RESPONSIBILITY.**

**A. Parent as Party:** The parent of a child alleged, or found to be, a Youth-in-Need-of-Care is a party to the case.

**B. Dispositions:** The Court may order the parent to submit to services and other requirements, including, but not limited to: medical evaluation; anger management; drug and alcohol screening; home electronic monitoring; assessment and treatment of psychological / psychiatric disturbance or alcohol/drug abuse, including involuntary residential treatment; home electronic monitoring; drug and alcohol screening; anger management classes; domestic violence education classes; domestic violence treatment for perpetrators; compliance with restraining orders; parenting classes; mandatory school attendance; visitation; cooperation with behavioral health; compliance with a case plan and/or service agreement; and cooperation with, and participation in, any and all services in which the child is engaged, including on-site residential or institutional services. The Court may make a particular placement conditional on compliance with any of its orders.

**C. Cost of Support:** If the Court determines that the parent, guardian, or custodian is financially able to do so, the Court may order him/her to pay all or part of the support, evaluation, and/or treatment costs for the child and/or parent and for the Court proceedings, if the child is found to be a Youth-in-Need-of-Care and is placed in the legal custody of the child, whether or not the child is placed out of parental care.

**D. Change of Address:** If the parent has a change of address during the pendency of proceedings under this title, the parent must inform the Court.

#### **81.1.12 INTERVENTION.**

**A. Who May File for Intervention:** Any relative, extended family member, or permanent or long term foster parent may file a motion for intervention with the Court having jurisdiction over the custody, placement, guardianship, or wardship of a child.

**B. Dismissal of Petition:** A motion for intervention may be dismissed on the motion of any party or on the Court's own motion if the motion to intervene does not state a prima facie case of establishment of a significant familial-type relationship with the child. The motion to intervene must also allege facts to support that the intervention is in the best interests of the child.

**C. Granting Intervention:** If the Court determines by clear and convincing evidence that a significant familial-type relationship exists, and that intervention is in the best interests of the child, the Court shall allow the motion for intervention.

1. Rights of Intervener: The Court will determine, in the best interests of the child, what rights similar to those of a party shall be extended to an Intervener, including, but not limited to, the rights of discovery, counsel, examination of the record and witnesses, custody, and visitation.
2. Custody and Visitation: If the Court determines that custody, guardianship, right of visitation, or other generally recognized right of a parent, is appropriate, the Court may grant such custody, guardianship, right of visitation, or other right to the person, if to do so is in the best interests of the child. The Court may determine temporary custody of the child or temporary visitation rights under this paragraph pending a final order.

**D. Denying Intervention:** If the Court denies intervention, but determines that an ongoing personal relationship exists and that visitation or contact rights are in the child's best interest, the Court may grant visitation or contact rights to the person having the ongoing relationship if to do so is in the best interests of the child. The Court may order temporary visitation rights under this section pending a final order.

**E. Definition of "On-Going Personal Relationship":** As used in this section, an "on-going personal relationship" means a relationship with substantial continuity through interaction, companionship, interplay, and mutuality.

#### **81.1.13 STANDARDS OF PROOF.**

**A. Adjudicatory Hearing for Youth-in-Need-of-Care:** In an adjudicatory hearing to determine if a child is a youth-in-need-of-care, the standard of proof shall be clear and convincing evidence.

**B. Contempt:** In a hearing to determine whether or not a person is in contempt of Court, the standard of proof shall be clear and convincing evidence.

**C. Legal Guardianship and Adoption:** In a hearing to appoint a legal guardian or approve an adoption, the standard of proof shall be clear and convincing evidence.

**D. Return of Custody:** In a hearing in which a parent, guardian, or custodian seeks return of a child from a legal guardianship or permanent foster care, the standard of proof shall be clear and convincing evidence.

**E. Revocation of Consent or Release and Surrender:** In a hearing to revoke consent or Release and Surrender for adoption, the standard of proof shall be clear and convincing evidence.

**F. Termination of Parental Rights:** In a hearing to terminate parental rights, the standard of proof shall be proof beyond a reasonable doubt.

**G. Transfer of Jurisdiction:** In a hearing to determine whether or not to accept a transfer of jurisdiction from state court to Tribal Court, the standard of proof shall be clear and convincing evidence.'

**H. Other Hearings:** In all other hearings the standard of proof shall be a preponderance of the evidence.

**81.1.14 USE OF REPORTS IN JUVENILE PROCEEDINGS.** For the purpose of establishing that a child is a Youth-in-Need-of-Care, determining proper disposition of a child, and/or periodically reviewing the child's and family's progress, written reports and other materials relating to the child's mental, physical, educational, and social history and condition, may be required by the Court, 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 that person is reasonably available.

**81.1.15 CONSOLIDATION.** Proceedings involving two or more children may be consolidated when the factual basis for jurisdiction is the same or similar, or for the convenience of all parties. Separate dispositional and review hearings may be held, if it is reasonable to do so.

**81.1.16 PRESENCE OF PARENT, GUARDIAN, CUSTODIAN, OR GUARDIAN AD LITEM.** The Court shall endeavor to notify parent(s), or guardian(s), or custodian(s) of the child, including foster parents, when appropriate, of all hearings. Provided, however, that any party may request the foster parent, custodian, etc. be excluded from all or any part of a hearing in which confidential or sensitive information is being presented.

**81.1.17 CONDUCT OF HEARING; SUBPOENA; WITNESS FEES.** All Court hearings shall be held without a jury and may be continued from time to time. The hearings shall be recorded. Witnesses or other persons necessary for the conduct of a hearing may be subpoenaed.

**81.1.18 GROUNDS FOR RE-HEARING TO VACATE, RECONSIDER, OR MODIFY.** A child, parent, guardian, or custodian of a child who has been found to be a Youth-in-Need-of-Care, may within one year move the Court for a new evidentiary hearing on the grounds that there has been discovered 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. 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.

**81.1.19 GROUNDS FOR SUPPLEMENTAL PETITION.** Once a child has been found to be a Youth-in-Need-of-Care, and placed in the legal custody of beda?chelh, the Program may subsequently file a Supplemental Petition alleging new charges based on current circumstances which, if true, will substantially change the nature of the case planning. If the alleged charges are serious, the parent shall have a due process right to an evidentiary hearing. In such cases, all requirements shall be followed as though an original Petition is being filed.

**81.1.20 MODIFICATION, REVOCATION, OR EXTENSION OF ORDER.** The Court may modify, revoke, or extend an order at any time upon the motion and showing by any party that there has been a substantial change of circumstances.

**81.1.21 ATTORNEY, SPOKESPERSON, GUARDIAN AD LITEM FOR CHILD.** Any child may appear with a retained attorney. The Court, at any stage of a Youth-in-Need-of-Care proceeding, may appoint an attorney or a guardian ad litem, or approve a spokesperson for a child who has no parent, guardian, or custodian appearing on behalf of the child, or whose interests conflict with the interests of parents, guardians, or custodians, or when it appears to the Court that the child's best interests warrant such an appointment.

**81.1.22 ATTORNEY, SPOKESPERSON FOR PARENT, OR OTHER PARTY.** A parent or other party may appear with a retained attorney. The Court, at any stage of a Youth-in-Need-of-Care proceeding, may appoint an attorney for an indigent parent upon request, so long as such court-appointed attorneys are available and funded. The Court may approve a spokesperson for a parent or other party upon request.

**81.1.23 TESTIMONY OF A CHILD IN CHAMBERS OR BY VIDEOTAPE.** The Court, upon its own motion, or upon the motion of any party, may take testimony from any child appearing as a witness and may exclude the child's parent(s) and other persons if the Court finds such action would be likely to be in the best interests of the child.

**81.1.24 CONTEMPT.** Any person who fails to obey a Court order or subpoena may be cited by the Court to appear and show cause why s/he should not be held in contempt of Court. If the Court finds contempt of Court, the person shall be subject to sanctions.

**81.1.25 NOTICE.** All parties to a proceeding under this Ordinance shall receive written notice of the time and place of a proceeding and shall receive written notice of their right to be heard in such a proceeding.

**81.1.26 JUDICIALLY BLOCKED ACCOUNTS.**

**A. Establishment:** A Judicially Blocked Account shall be established by the Finance Department for each child who is the subject of a YINC or Guardianship case. A provision providing for the creation of a judicially blocked account shall be contained in the Order on Adjudicatory Hearing or in the Order Establishing Guardianship.

**B. Funds:** The following types of funds shall be deposited into the youth's judicially blocked account:

1. per capita distributions;
2. settlements from lawsuits;
3. Inheritance dispositions.

**C. Monitoring:** beda?chelh shall provide information to the Court as to the youth's judicially blocked account in each Report for Review Hearing.

**D. Petition for Withdrawal of Funds:**

1. The following parties may file a Petition for Withdrawal of Funds from the Youth's judicially blocked account:
  - a. The youth's parents;
  - b. The youth's foster parents or other physical placement;
  - c. beda?chelh;
  - d. The youth, if the youth is over the age of twelve.
2. The Petition for Withdrawal of Funds must contain the following information:
  - a. Name of petitioner and relation of petitioner to youth if the petitioner is not a party to the case;
  - b. Amount of funds the petitioner wishes to withdraw.
  - c. A description of what the petitioner plans to purchase with the funds.
3. A Petition for Withdrawal of Funds shall be made in writing and filed with the Court.

**E. Service:** The Petitioner shall serve a copy of the Petition for Withdrawal of Funds upon all parties to the case and to the Finance Department by certified mail, return receipt requested, not less than ten *calendar* days prior to the hearing.

**F. Hearing on Petition for Withdrawal of Funds:**

1. The Court shall conduct a hearing within 14 *calendar* days of the filing of the Petition for Withdrawal of Funds.
2. The Court shall provide a written or oral report containing any information the Court considers relevant to the proceeding and shall make a recommendation to the Court.
3. The Finance Department shall provide an account history for the Judicially Blocked Account for the past six months;
4. The Court may approve by Court Order the release of funds from the youth's Judicially Blocked Account upon a showing of the following:
  - a. The petitioner has established that use of the funds will be for the benefit of the youth;
  - b. The request is reasonable in light of the needs of the youth and the amount of funds available in the youth's judicially blocked account;
  - c. The petitioner understands that he/she is responsible for providing the court with a copy of receipts for items purchased with the funds, or a detailed accounting of how the money was spent, and that a show-cause hearing may be held if the petitioner does not provide the court with this documentation;
  - d. The Court Order shall also establish the date by which the petitioner must provide receipts for items purchased with funds from the youth's account, and/or a detailed accounting of how the funds were spent to the Court, the Court, and the Finance Department;
  - e. The standard of proof shall be clear and convincing evidence that the request is reasonable in light of the needs of the youth.

**G. Termination of Judicially Blocked Account:**

- a. The youth has reached his / her eighteenth birthday;
- b. The YINC Case has been dismissed by the Court;
- c. The Guardianship Case has been dismissed by the Court; or
- d. The entry of a Decree of Adoption in this Court or any other Court with regards to the child.
2. Upon the termination of a Judicially Blocked Account, the funds shall be released to the youth if the youth is over the age of eighteen, or to the youth's parent if the youth is under eighteen years old.
3. A history of the youth's Judicially Blocked Account for the preceding twelve months shall be provided to the person to whom the funds are released.

## 81.2 YOUTH-IN-NEED-OF-CARE—PRE-ADJUDICATION

### 81.2.1 DEPENDENCY JURISDICTION.

**A. Basis of Dependency Jurisdiction:** The Tribal Court has jurisdiction as provided in Section 81.1.3 of this title, and further has dependency jurisdiction in any case involving a Tulalip child who is under 18 years of age or who has been continued thereafter in the jurisdiction of the Court and:

1. Whose parents, guardians, custodians, or other persons responsible for the child's care have abandoned the child, as defined under this title;
2. Whose parents, guardians, custodians, or other persons responsible for the child's care have subjected the child to emotional maltreatment, physical abuse, or sexual abuse as defined under this title;
3. Whose parents, guardians, custodians, or other persons responsible for the child's care have subjected the child to neglect as defined under this title;

4. Who has a history of serious unexplained injuries while in the care or custody of the parents guardians, custodians, or other persons responsible for the child's care;
5. Whose behavior is such as to endanger the welfare of him/herself or others; or
6. Whose parent(s), guardian(s), custodian(s), is unable, through no fault of their own, to care for the child.

**B. Emancipated Child:** The Court shall have no further jurisdiction under this title over any child who has been emancipated by Court order or by marriage.

### **81.2.2 COMMENCEMENT OF DEPENDENCY PROCEEDINGS**

**A. Role of Child Protective Services (C.P.S.):**

1. Initiate an investigation when an allegation is made that a child has been abused, abandoned, or neglected, or that the child presents a danger to self or others;
2. Notify beda?chelh of the allegation;
3. Provide protection and assistance in the removal and placement of children, on request, to beda?chelh and authorized child protection and placement agency personnel;
4. Take custody of a child if the investigator believes that the child's health, safety, and welfare will be seriously endangered if the child is not taken into protective custody. The officer shall immediately contact beda?chelh to discuss emergency placement options. If beda?chelh is not available, the officer shall place the child in a safe emergency placement consistent with the short-term placement preferences in this Title.
5. Work with beda?chelh to notify the parent, guardian, or custodian if he or she is unaware that the child has been placed out of the home, but the location of the placement shall not be released if necessary for the child's protection.

**B. Role of beda?chelh:**

1. Review all complaints received from CPS in a timely manner.
2. Attempt to contact and interview all relevant parties, including the parents and the child, as well as, if appropriate, caretakers, relatives, extended family members, neighbors, teachers, and treatment personnel;
3. Attempt to visit the home and/or place where the child is residing;
4. Assess the child's current circumstances, including home environment, family and parental history, parent's current circumstances, including financial information if relevant, the nature of the reported charges, and the information supporting or contravening those charges;
5. Determine whether the child can remain safely in the home with services provided, and assist in providing those services;
6. Seek out relatives, extended family members, or others with whom the child is familiar, and with whom the child can be placed, if necessary, pending further investigation;
7. Make tentative conclusions as to what is in the best interests of the child, and how best to protect the child's health, safety, and welfare until further investigation can be concluded; and
8. Information gained in the investigation shall be presented in petitions alleging that the child is in need of care and may be presented at subsequent hearings.

**C. Commencement of Proceeding:** A dependency case commences when:

1. A child is taken into protective custody as permitted under this title; and/or
2. A Petition is filed alleging that the child is a Youth-in-Need-of-Care, as set forth in this title.

### **81.2.3 PETITIONS ALLEGING THAT A CHILD IS A YOUTH-IN-NEED-OF-CARE**

**81.2.3.1 WHO MAY FILE A PETITION.** Beda?chelh may file a Petition alleging that a child named in the Petition is a Youth-in-Need-of-Care and is within the dependency jurisdiction of the Court as provided in this title.

**81.2.3.2 TIMELINES.**

**A.** If beda?chelh has probable cause to believe that the Court has jurisdiction and dependency jurisdiction over the child, the program may file a Petition with the Court. A Petition alleging that the child is a Youth-in-Need-of-Care may be filed with the Court through:

1. a Petition for Emergency Pick Up and Protective Custody of a child;
2. a Petition for Preliminary Hearing;
3. a Petition for Adjudicatory Hearing; or
4. a Petition for Transfer of Jurisdiction Over Youth to Tribal Court;

**B.** When a child is removed from parental custody prior to the filing of a Petition and beda?chelh continues to retain legal custody of the child, a Petition for Preliminary Inquiry Hearing alleging that the child is a Youth-in-Need-of-Care shall be filed within seventy-two (72) hours of the emergency removal of the child and prior to the Preliminary Inquiry Hearing.

**C.** Whenever reasonable, the program shall file a Petition for Emergency Pick Up and Protective Custody prior to the emergency removal of a child from parental custody.

**81.2.3.3 CAPTION OF THE PETITION.** The Petition and all subsequent Court documents in the proceeding shall be entitled: "In Re the Welfare of \_\_\_(Child's Name)\_\_\_, (\_D.O.B.\_).

**81.2.3.4 CONTENTS OF THE PETITION.** The Petition shall set forth, in ordinary and concise language, the following facts as are known:

**A.** The full name, residence, date and place of birth, sex of child, and tribal status.

**B.** The names of the persons with whom the child has lived, the residences at which the child has lived, for the previous year, and the length of time the child has lived with each person and at each residence;

**C.** The names and residences of the child's legal parents, guardians, or custodians. In addition, the names and residences of putative fathers or step-parents, if any;

**D.** The facts upon which the allegations are based, and which, if true, would bring the child within the jurisdiction of the Court as set forth in this title. Such recitation shall include, but not be limited to, the date, time, and location where the alleged facts occurred, and the names of any alleged witnesses, as well as all other information upon which the Petitioner relies to form a belief that the child is within the jurisdiction of the Court;

**E.** Whether there is a custody proceeding involving the child pending in another court;

**F.** Whether any person other than a parent has or claims to have physical custody of the child, and if so, the name and the residence of that person;

**G.** A citation to the specific section of this Title upon which Petitioner relies in alleging Court jurisdiction over the child;

**H.** If the child is in shelter care, or other placement out of parental care, the time and date the child was placed, the location of the child if not confidential, the reasons the child has been placed out of parental care, and the reasonable efforts made by the beda?chelh program to prevent or negate the need for removal of the child; and

**I.** If appropriate, a request that the parents or legal guardians be ordered to pay court costs, program fees, and such other reasonable costs associated with these proceedings.

**81.2.3.5 VERIFICATION OF PETITION.** The statements in the Petition may be made upon information and good faith belief. The Petition shall be prepared, dated, and signed by beda?chelh.

**81.2.3.6 SERVICE OF THE PETITION ALLEGING THAT A CHILD IS A YOUTH-IN-NEED-OF-CARE.**

- A.** Service of the Petition Alleging that a Child is a Youth-In-Need-of-Care shall be personally served on:
  - 1. The child's parent, current guardian, or custodian;
  - 2. The child who is the subject of the Petition Alleging that a Child is a Youth-In-Need-of-Care if he or she is twelve (12) years of age or older;
- B.** Notice shall be served via first class and certified mail, return receipt requested on:
  - 1. Any person the parties or the Court deem necessary for proper adjudication; and
  - 2. If the child is not enrolled in The Tulalip Tribes, any tribe the child is enrolled in or is eligible for enrollment.
- C.** If any party who is required to be personally served is outside the Tribes' service area, service shall be by certified mail, return receipt requested, or by any other means reasonably designed to give notice.
- D.** If any party's current address is unknown, the Petition shall be published in a regularly published newspaper of the last known area the party resided in.
- E.** Service shall be made by any person over the age of eighteen (18) who is not a party to the proceedings.

**81.2.3.7 DISMISSAL OF THE PETITION.** The Court may dismiss a Petition at any stage of the proceedings with good cause shown and stated.

#### **81.2.4 PROTECTIVE CUSTODY**

**81.2.4.1 WHO IS AUTHORIZED TO TAKE A CHILD INTO PROTECTIVE CUSTODY.** A child may be taken into protective custody by an authorized law enforcement officer or a representative of beda?chelh.

**81.2.4.2 WHEN PROTECTIVE CUSTODY IS AUTHORIZED.** Protective custody of a child is authorized if:

- A.** An authorized law enforcement officer or a representative of beda?chelh has reasonable grounds to believe that the child is within the jurisdiction of the Court, the child is in need of care, and that the child's health, safety, and welfare will be seriously endangered if the child is not taken into custody; and/or
- B.** The Court has issued a protective custody order. If the judge cannot be present on the Reservation, a protective custody order may be transmitted by the judge via telephone, computer, or fax.

**81.2.4.3 DEPENDENCY JURISDICTION ATTACHES AT TIME OF CUSTODY.** The Court's dependency jurisdiction shall attach at the time the child is taken into protective custody, with or without Court order.

**81.2.4.4 NOTIFICATION TO PARENT, GUARDIAN, OR CUSTODIAN.** At the time the child is taken into protective custody, or as soon thereafter as practicable, the person taking the child into custody shall notify the child's parent(s), guardian(s), or custodian(s). The notice shall inform the parent(s), guardian(s), or custodian(s) of the action taken and of the date and time of the Preliminary Inquiry Hearing.

**81.2.4.5 RELEASE OF CHILD TAKEN INTO PROTECTIVE CUSTODY.** The person taking the child into protective custody shall release the child to the physical custody of the child's parent or other responsible person if:

- A.** Safeguards are in place which make it reasonable to believe that the child is no longer in immediate risk of harm while in the parent's, guardian's, or custodian's physical custody; and/or

**B.** The parent, guardian, or custodian is not the person from whom the child was removed, and there is reasonable cause to believe that the child is not at risk of harm while in the parent's, guardian's, or custodian's physical custody.

**81.2.4.6 CHILD REMAINS IN PROTECTIVE CUSTODY.** Notwithstanding placement in the physical custody of the parent, guardian, or custodian, the child remains in the legal custody of the Tribe pending the Preliminary Inquiry Hearing.

**81.2.4.7 TERMINATION OF PROTECTIVE CUSTODY.** Protective custody of the child under this section shall terminate in seventy-two (72) hours unless a Petition has been filed and the Court has issued an order granting legal custody of the child to the Tribe.

**81.2.4.8 PLACEMENT OF THE CHILD WHEN NOT RELEASED.** A child who cannot be released to a parent, guardian, or custodian shall be placed, pending the Preliminary Inquiry Hearing, according to the placement provisions set forth in this Ordinance.

**81.2.4.9 NO CHILD TO BE DETAINED IN JAIL.** No child placed in protective custody shall be detained at any time in a jail, prison, police station, or other place where adults are detained, except that a child may be detained in a police station for up to five (5) hours if necessary to determine the child's name, age, residence, and other identifying information.

## **81.2.5 PROTECTIVE CUSTODY ORDER**

**81.2.5.1 BASIS FOR PROTECTIVE CUSTODY ORDER.** The Court shall issue a protective custody order if the Court finds probable cause to believe that a child within the Court's jurisdiction is a Youth-in-Need-of-Care, and that the child's health, safety, and welfare will be seriously endangered if the child is not taken into protective custody. One or more of the following circumstances may provide probable cause to believe that the child's health, safety, and welfare will be seriously endangered if the child is not taken into protective custody:

- A.** The Child is suffering from an illness or injury, and no parent, guardian, or custodian responsible for the child is able or willing to provide adequate treatment for the child;
- B.** The child is in immediate danger from her/his surroundings, and removal is necessary for the protection of the child;
- C.** The child's health is in immediate risk of harm, and removal is necessary for the protection of the child;
- D.** The child will be subject to injury or abuse by others or by her/himself if not placed in custody;
- E.** The child has been abandoned by her/his parents, guardians, custodians, or other persons responsible for the care of the child;
- F.** No parent, guardian, or custodian is able or willing to provide adequate care and supervision for the child; or
- G.** The child will run away, or be taken from the area, and will be unavailable for further proceedings.

**81.2.5.2 CONTENT OF ORDER.** The protective custody order shall specifically name the child to be taken into custody. It shall state the time and date issued, the place where the child is to be taken, and the name of the person or persons authorized to take the child into custody. The order shall be signed by the judge or judicial officer.

**81.2.5.3 SERVICE AND DURATION OF ORDER.** A protective custody order must be executed within twenty-four (24) hours from the time the judge issues it. A child taken into custody under such an order may be held until the conclusion of the Preliminary Inquiry Hearing, or as ordered by the court.

## **81.2.6 PRELIMINARY INQUIRY HEARING**

**81.2.6.1 SPEEDY HEARING REQUIRED.** Absent a Court order to the contrary, no child shall be held in the protective custody of the Tribe longer than seventy-two (72) hours, excluding Tribal holidays and weekends, without a hearing, regardless of where the child is placed pending the hearing. If a judge is not available, the hearing shall take place as soon as practicable. A Preliminary Inquiry Hearing may be postponed by order of the Court for good cause or by stipulation of the parties.

**81.2.6.2 NOTICE OF PRELIMINARY INQUIRY HEARING.**

**A.** The Court clerk shall issue notice of the Preliminary Inquiry Hearing at least twenty (20) *calendar* days before the hearing is scheduled to take place.

1. Notice shall include:
  - a. The date, time, and place of the hearing and a copy of the Petition Alleging that a Child is a Youth-In-Need-of-Care; and
  - b. A statement indicating that the rights of the legal custodian, guardian, parent or parents may be affected in the proceeding and that if the legal custodian, guardian, parent or parents fail to appear at the time and place specified in the summons, the Court may take legal custody of the child from the parent, guardian, or custodian, make the child a ward of the Court, and take any other action that is authorized by law; and
2. Notice shall be served via first class and certified mail, return receipt requested on:
  - a. The child who is the subject of the petition if twelve (12) years of age or older;
  - b. The child's parent, current guardian, or custodian;
  - c. Any person the parties or the Court deem necessary for proper adjudication; and
  - d. If the child is not enrolled in The Tulalip Tribes, any tribe the child is enrolled in or is eligible for enrollment.
3. If any party who is required to be personally served is outside the Tribes' service area, service shall be by certified mail, return receipt requested, or by any other means reasonably designed to give notice.
4. If any party's current address is unknown, the notice shall be published in a regularly published newspaper of the last known area the party resided in.
5. Service shall be made by any person over the age of eighteen (18) who is not a party to the proceedings.

**81.2.6.3 DETERMINATION BY THE COURT.** At the conclusion of the Preliminary Inquiry Hearing, the Court shall make written findings as to:

- A.** The tribal status of the child;
- B.** Whether or not probable cause exists to believe that the child is a Youth-in-Need-of-Care as alleged in the Petition, or as otherwise determined;
- C.** Whether continued protective custody is necessary for the protection of the child pending the Adjudicatory Hearing and, if so, whether the child should remain in the physical custody of a parent, guardian, or custodian, or be placed in shelter, or other, care pending the Adjudicatory Hearing;
- D.** Whether interim orders for the protection of the child and/or the family should be made while further proceedings are being considered. The Court may issue any of the following orders: restraining orders; evaluation and treatment (including involuntary residential treatment) of substance abuse, mental illness, and emotional disturbance; parenting classes; mandatory school attendance; visitation; and any other services or activities for the benefit of the child and his/her family;
- E.** Whether additional hearings are warranted.
- F.** The addresses of the parties. The parties shall be ordered to keep the Court informed as to any changes in their whereabouts and mailing addresses and telephone numbers.

**81.2.6.4 ATTENDANCE OF PARENT, GUARDIAN, OR CUSTODIAN.** If the child's parent, guardian, or custodian is not present at the Preliminary Inquiry Hearing, the Court shall determine what efforts have been made to notify them and obtain their presence. If reasonable efforts have been made, the Court may proceed with the hearing in their absence.

**81.2.6.5 RIGHT TO AN ATTORNEY OR SPOKESPERSON.** The Court shall advise the parties of the right to retain an attorney, Spokesperson, or GAL, at their own expense.

**81.2.6.6 RIGHT TO PRESENT EVIDENCE.** A parent, lawyer for a parent, child over the age of twelve (12), or lawyer for a child of any age, shall be given the opportunity to present evidence to the Court at the Preliminary Inquiry Hearing, which may include evidence that the child can be returned to parental care pending the Adjudicatory Hearing without further jeopardy to the child's health or safety, without endangering the health or safety of others, or without fear of removal of the child from the area.

**81.2.6.7 DISPOSITION ON FINDING OF PROBABLE CAUSE.** If the Court determines there is probable cause to believe the child is a Youth-in-Need-of-Care, the Court may:

- A.** Continue the Petition, grant legal custody of the child to the Tribe, and place the child in the physical custody of the parent, guardian, or custodian pending the Adjudicatory Hearing and set an Adjudicatory Hearing; or
- B.** Continue the Petition, grant legal custody of the child to the Tribe, and place the child in the physical custody of another appropriate person, or in shelter or foster care as approved by beda?chelh, and set an Adjudicatory Hearing; or
- C.** Affirm any other reasonable plan supported by the evidence, including but not limited to the postponement of proceedings, a Family Reunification Agreement, mediation, or a plan stipulated to by the parties; and
- D.** Order such restrictions on contact or visitation that the Court deems appropriate.

**81.2.6.8 SETTING OF ADJUDICATORY HEARING.** The Court shall set the date for the Adjudicatory Hearing. Date of hearing ~~shall~~ be within ~~calendar~~ 75 **calendar** days from the date the petition alleging that the child is a Youth-In-Need-of-Care was filed. If the parent(s), guardian(s), or custodian(s) is not present at the Preliminary Inquiry Hearing, a Notice of Adjudicatory Hearing shall be served upon the parent(s), guardian(s), or custodian(s) as required by this section.

**81.2.6.9 NOTICE OF ADJUDICATORY HEARING.** The Court clerk shall issue notice of the Adjudicatory Hearing at least twenty (20) **calendar** days before the hearing is scheduled to take place.

- A.** Notice shall include:
  - 1. The date, time, and place of the hearing and a copy of the Petition Alleging that a Child is a Youth-In-Need-of-Care; and
  - 2. A statement indicating that the rights of the legal custodian, guardian, parent or parents may be affected in the proceeding and that if the legal custodian, guardian, parent or parents fail to appear at the time and place specified in the summons, the Court may take legal custody of the child from the parent, guardian, or custodian, make the child a ward of the Court, and take any other action that is authorized by law; and
- B.** Notice shall be served via first class and certified mail, return receipt requested on:
  - 1. The child who is the subject of the petition if twelve (12) years of age or older;
  - 2. The child's parent, current guardian, or custodian;
  - 3. Any person the parties or the Court deem necessary for proper adjudication; and
  - 4. If the child is not enrolled in The Tulalip Tribes, any tribe the child is enrolled in or is eligible for enrollment.
- C.** If any party who is required to be personally served is outside the Tribes' service area, service shall be by certified mail, return receipt requested, or by any other means reasonably designed to give notice.

D. If any party's current address is unknown, the notice shall be published in a regularly published newspaper of the last known area the party resided in.

E. Service shall be made by any person over the age of eighteen (18) who is not a party to the proceedings.

**81.2.6.10 DISMISSAL OF THE PETITION.** If the Court determines there is no probable cause to believe the child is a Youth-in-Need-of-Care, the Petition shall be dismissed without prejudice, and the child released from protective custody.

## **81.2.7 PRE-ADJUDICATORY PROCEDURES AND SERVICES**

### **81.2.7.1 SCOPE OF CONTINUED INVESTIGATION AND PROVISION OF SERVICES BY BEDA?CHELH.**

**A. Pending the Adjudicatory Hearing:** Pending the Adjudicatory Hearing, beda?chelh shall continue its investigation and shall continue to offer appropriate services to the parent, guardian, or custodian and the child, and shall make reasonable efforts to prevent the removal of the child from the care of the parent, guardian, or custodian, and to eliminate the need for continued removal. In the course and scope of the continuing investigation, beda?chelh shall, to the extent possible:

1. Contact and interview all relevant parties, including the parents and children, as well as, if appropriate, caretakers, relatives, extended family members, neighbors, teachers, and treatment personnel;
2. Visit the home and/or place where the child was residing and/or is now residing;
3. Address the child's past and current circumstances, including home environment, family and parental history, parent's current circumstances, including financial information if relevant, the nature of the reported charges, and the information supporting or contravening those charges;
4. Determine if the child can remain safely in parental care with services provided, and assist in providing those services;
5. Seek out relatives, extended family members, or others with whom the child is familiar, and with whom the child can be placed if return home is not possible; and
6. Draw conclusions as to what is in the best interests of the child, and how best to protect the child's health and safety to prevent removal or make return to parental care possible.

**81.2.7.1.1. ADJUDICATORY REPORTS BY BEDA?CHELH.** beda?chelh shall prepare, and any other party or person may prepare, a report to the Court for the adjudication of a child who has been temporarily found by the Court to be a Youth-in-Need-of-Care. The adjudicatory reports shall be filed, and copies shall be given to all parties or sent via first class mail, no later than twenty (20) **calendar** days before the Adjudicatory Hearing, except by order of the Court. beda?chelh's report shall be detailed, including dates, case activity, persons contacted, and information secured, and shall:

**A.** Set out all information secured in the course of the continuing investigation as relevant and necessary to the adjudication, including, but not limited to:

1. A chronology of events relevant to the case;
2. Contacts and interviews with all relevant parties, including the child, parents, and, if appropriate, caretakers, relatives, extended family members, neighbors, teachers, and treatment personnel;
3. Details of visits to the parent's and child's past or current homes;
4. A list of all places the child has lived, while in Tribal custody, and with whom and in what kind of placement;
5. Information regarding the nature of the reported charges, and the information supporting or contravening those charges; and
6. Any other information gathered in the course of the investigation and pre-adjudicatory service to the family; and

- B.** Describe beda?chelh's assessment of services needed to prevent or eliminate the need for removal of the child from parental care, and a description of all beda?chelh's efforts to locate, secure, offer, and refer the family to those services;
- C.** Describe all reasonable efforts made to prevent the removal of the child from the care of the parent, guardian, or custodian, and to eliminate the need for removal;
- D.** Set out recommendations for placement, reasons for choosing that placement, assurance that the placement is the least restrictive, most family-like setting available to meet the child's needs and is in close proximity to the parent and, if the child is not to be placed with a relative, extended family member, or a familiar person, reasons why not;
- E.** Specify, if necessary, the identified concurrent, alternative permanent plan for the child, in the event reunification does not occur, either because of parental non-compliance or because it is determined not to be in the best interests of the child, the family, and/or the Tribe. This concurrent 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. Specify what efforts have been made to make that placement available if necessary;
- F.** Draw conclusions and make recommendations as to what is in the best interests of the child, and how best to protect the child's health and safety to prevent removal or make return to parental care possible or, if that is not possible, to effect a different permanent plan. Specify what reasonable efforts have been made to prevent or eliminate removal, and what future reasonable efforts are needed to continue progress towards reunification;
- G.** Make recommendations to the Court regarding disposition.

**81.2.7.2 CASE PLAN PENDING ADJUDICATORY HEARING.** Prior to the Adjudicatory Hearing, beda?chelh shall hold a conference with the parents, guardians, or custodians, and all attorneys and/or spokespersons, and the child, if appropriate, and any other persons who may provide helpful participation, as approved by beda?chelh. For each child and parent, guardian, or custodian willing to work cooperatively with beda?chelh pending the Adjudicatory Hearing, beda?chelh shall, with the participation of the family in a meeting using the Family Unity Model, develop an appropriate case plan, designed to protect the child's health and safety and to reunify the family. The plan will be detailed and specific as to:

- A.** The areas in which the family needs assistance;
- B.** The services required to address those needs;
- C.** Who will provide those services;
- D.** The time lines to which the family and beda?chelh will be held for completion of services; and
- E.** How the family's progress, or lack of progress, will be measured.

**81.2.7.2.1 PRE-DISPOSITIONAL REPORTS / DISPOSITIONAL RECOMMENDATIONS BY BEDA?CHELH.** beda?chelh shall prepare, and any other party or person may prepare, a report to the Court for the disposition of a child who has been found by the Court to be a Youth-in-Need-of-Care. The pre-dispositional reports shall be filed, and copies shall be given to all parties or sent via first class mail, no later than twenty (20) *calendar* days before the Dispositional Hearing, except by order of the Court. The Program's report shall be detailed, including dates, case activity, persons contacted, and information secured, and shall:

- A.** Set out all information secured in the course of the continuing investigation as relevant and necessary to the dispositional recommendations, including, but not limited to:
  1. A chronology of events relevant to the case;
  2. Contacts and interviews with all relevant parties, including the child, parents, and, if appropriate, caretakers, relatives, extended family members, neighbors, teachers, and treatment personnel;
  3. Details of visits to the parent's and child's past or current homes;
  4. A list of all places the child has lived, while in Tribal custody, and with whom and in what kind of placement;

5. Information regarding the nature of the reported charges, and the information supporting or contravening those charges; and
  6. Any other information gathered in the course of the investigation and pre-adjudicatory service to the family; and
- B.** Describe beda?chelh's assessment of services needed to prevent or eliminate the need for removal of the child from parental care, and a description of all beda?chelh's efforts to locate, secure, offer, and refer the family to those services;
- C.** Describe all reasonable efforts made to prevent the removal of the child from the care of the parent, guardian, or custodian, and to eliminate the need for removal;
- D.** Set out recommendations for placement, reasons for choosing that placement, assurance that the placement is the least restrictive, most family-like setting available to meet the child's needs and is in close proximity to the parent and, if the child is not to be placed with a relative, extended family member, or a familiar person, reasons why not;
- E.** Specify, if necessary, the identified concurrent, alternative permanent plan for the child, in the event reunification does not occur, either because of parental non-compliance or because it is determined not to be in the best interests of the child, the family, and/or the Tribe. This concurrent 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. Specify what efforts have been made to make that placement available if necessary;
- F.** Draw conclusions and make recommendations as to what is in the best interests of the child, and how best to protect the child's health and safety to prevent removal or make return to parental care possible or, if that is not possible, to effect a different permanent plan. Specify what reasonable efforts have been made to prevent or eliminate removal, and what future reasonable efforts are needed to continue progress towards reunification;
- G.** Make recommendations to the Court regarding disposition.

**81.2.7.3 AGREED ORDER.** At a conference, or at another appropriate time and place, an alternative to the Adjudicatory Hearing, an Agreed Order, may be discussed. If such an agreement is satisfactory to the party and beda?chelh, it will be presented to the Court.

**81.2.7.3.1 WRITTEN AGREEMENT.** The Agreed Order shall be reduced to writing and signed by the parties and shall state the conclusions reached as a result of the conference, specifying in detail what is expected of beda?chelh and the parties entering into the agreement. Each party will receive a copy of the signed agreement which should include a statement that the agreement has been read to the parties and that they understand the requirements and consequence of the agreement.

**81.2.7.3.2 ADMISSIONS UNDER OATH; FORFEIT OF RIGHT TO AN ADJUDICATORY HEARING.** The parties entering into the agreement shall admit, under oath, the allegations in the Petition, which allegations may be amended as agreed upon by the parties so long as the parties admit to facts which support a finding by the Court that the child is a Youth-in-Need-of-Care. By these admissions, the parties give up their right to an Adjudicatory Hearing.

**81.2.7.3.3 COURT ORDER:** The Court shall enter an order continuing the Petition and adopting the Agreed Order.

**81.2.7.3.4 COURT POSTPONEMENT OF FINDINGS:** Upon acceptance of the admissions of the parties and the written Agreed Order, the Court will continue protective custody of the child, but will postpone entering adjudicatory findings, and will postpone making the child a ward of the Court.

**81.2.7.3.5 TIME LIMIT.** The Agreed Order will be in effect no longer than six (6) months, except upon order of the Court.

**81.2.7.3.6 REVIEW, CONTINUATION, DISMISSAL, ADJUDICATION, OR EXTENSION.** beda?chel shall, with the family if possible, review the family's progress at least every thirty (30) *calendar* days. If, at any time after the initial thirty (30) *calendar* day period, but before the expiration of six (6) months, beda?chel concludes that the party entering into the agreement is fully compliant, and it is in the best interests of the child, beda?chel may move the Court for dismissal of the case. If, at any time after the initial thirty (30) *calendar* day period, but before the expiration of six months, beda?chel concludes that the party entering into the agreement is non-compliant, and that continuing the agreement is not in the best interests of the child, beda?chel may move the Court for termination of the Agreed Order and an adjudicatory order. If good cause is shown, the agreement can be extended, but no longer than an additional six (6) months.

**81.2.7.3.7 DISMISSAL OF THE PETITION.** If the party entering into the Agreed Order successfully completes the agreement, beda?chel will notify the Court, and the Court may dismiss the Petition, without prejudice, as to that party. The Court may do so without a hearing.

**81.2.7.3.8 COURT RESOLUTION OF DISPUTES.** If there is a dispute as to whether or not the agreement has been successfully completed, a hearing may set prior to the expiration of the agreement and the Court will determine the matter.

**81.2.7.3.9 RIGHT OF A PARTY TO REQUEST AN ADJUDICATORY HEARING.** A party who chooses not to enter into an Agreed Order has a right to an Adjudicatory Hearing as to her/himself, regardless of whether another party has entered into an Agreed Order on her/his own behalf.

## **81.2.8 ADJUDICATION**

### **81.2.8.1 ADJUDICATORY HEARING:**

**A. When Hearing Must be Held:** Except as provided in 81.2.7.1 above, or by order of the Court for good cause shown, the Court shall hold a hearing on a Petition alleging the child is within the jurisdiction of the Court no later than seventy-five (75) *calendar* days after the Petition has been filed unless exceptional reasons for a continuance are found. The party requesting the continuance shall have the burden of proving to ensure that the hearing on the petition occurs within the 75 *calendar* day time limit, the Court shall schedule and hear the matter on an expedited basis by a preponderance of the evidence that exceptional circumstances exist.

**B. Dismissal of the Petition:** The Court may, at any time, on the Court's own motion, or the motion of any party, dismiss the Petition. If the Court dismisses the Petition, the Court will set forth in a written order relevant findings in support of the dismissal.

### **81.2.8.2 DISCLOSURES.**

**A. Pre-Adjudicatory Disclosures:** Prior to adjudication on the Petition, each party, including beda?chel, shall disclose to each other party the following information and material within the possession or under the control of the party, and upon which they intend to rely at the hearing:

1. The names, and address if appropriate, of all persons the party intends to call as witnesses at the hearing, together with any relevant written or recorded statements or memoranda and the subject of their testimony;
2. Any written or recorded statements or memoranda of any oral statements made by either parent or by the child to any other party or agent for any other party;
3. Any reports or statements of experts made in connection with the particular case, including the results of any physical or mental examinations; and
4. Any books, papers, documents, or photographs that were obtained from or belong to any other party.

**81.2.8.2.1 TIME OF DISCLOSURE.** Disclosure shall be made as soon as practicable following the filing of a Petition, but not less than ten (10) *calendar* days before the hearing. The Court may supervise the exercise of discovery to the extent necessary to ensure that it proceeds properly and expeditiously. The obligation to disclose is an ongoing obligation and if a party finds, either before or during the hearing, additional material or information that is subject to disclosure, it shall be promptly disclosed.

**81.2.8.2.2 INFORMATION THAT NEED NOT BE DISCLOSED.**

**A.** The following material and information need not be disclosed: attorney work product, legal research, records, correspondence, reports or memoranda to the extent that they contain the opinions, theories, or conclusions of the attorneys or their agents or any other privileged attorney-client communications.

**B.** When some parts of certain material are subject to disclosure and other parts are not, a party may redact from the material those parts which are not subject to disclosure.

**C.** Privileged or confidential medical information, including the results of physical or mental exams, may be disclosed only by Court order. The Court may restrict disclosure to the party's attorney and/or spokesperson, who shall be prohibited from copying said material, but shall be allowed to read or summarize it to the client. If the parent or child is pro se, the Court may restrict disclosure to beda?chelh, or other appropriate person, who may be required to read or summarize the document to the parent or child.

**D.** Upon a showing of good cause, the Court may at any time order that specified disclosure be denied, restricted, or deferred, or make such other order as is appropriate; a good cause showing may be made in camera, recorded, and/or sealed, if appropriate.

**E.** Notwithstanding the above, attorney-client privileged communications shall not be subject to disclosure.

**81.2.8.2.3 WHEN DEPOSITIONS AUTHORIZED.** After the filing of a Petition, a party may move the Court for an order allowing a deposition to be taken to perpetuate the testimony of a witness who is outside the jurisdiction of, or otherwise not subject to the process of, the Court; or who is unable to attend because of age, sickness, infirmity, imprisonment, or undue hardship, and who is unable to appear by telephone. The affidavit in support of the motion must set out the proposed date and time of deposition. If granted, the Court, in its discretion, may set restrictions.

**81.2.8.2.4 DETERMINATION BY THE COURT.** At the conclusion of the Adjudicatory Hearing, the Court shall make written findings as to whether there is clear and convincing evidence that the child is a Youth-in-Need-of-Care.

**81.2.8.2.5 FINAL ORDER.** An Adjudicatory Order is a final order for purposes of appeal.

**81.2.9 YOUTH-IN-NEED-OF-CARE - DISPOSITION; PLACEMENT**

**81.2.9.1 DISPOSITIONAL HEARING.**

**A. Disposition Required / Time / Evidence:** At the termination of the Adjudicatory Hearing the Court shall enter an appropriate order directing the disposition to be made in the case. The Dispositional Hearing may be held immediately, or within twenty (20) *calendar* days of the Adjudicatory Hearing, except upon order of the Court.

**81.2.9.2 NOTICE.** All parties, including children over twelve (12) years of age and foster parents, shall be personally served with a Notice of Dispositional Hearing and their right to appear and be heard at the hearing, no later than five (5) *calendar* days before the Dispositional Hearing.

**81.2.9.3 PRE-DISPOSITIONAL REPORTS / DISPOSITIONAL RECOMMENDATIONS BY BEDA?CHELH.** beda?chelh shall prepare, and any other party or person may prepare, a report to the

Court for the disposition of a child who has been found by the Court to be a Youth-in-Need-of-Care. The pre-dispositional reports shall be filed, and copies shall be given to all parties or sent via first class mail, no later than ten (10) **calendar** days before the Dispositional Hearing, except by order of the Court. The adjudicatory report may be treated as the pre-dispositional report when the Adjudicatory and Dispositional hearings are heard at the same time. The Program's report shall be detailed, including dates, case activity, persons contacted, and information secured, and shall:

- A.** Set out all information secured in the course of the continuing investigation as relevant and necessary to the dispositional recommendations, including, but not limited to:
  - 1. A chronology of events relevant to the case;
  - 2. Contacts and interviews with all relevant parties, including the child, parents, and, if appropriate, caretakers, relatives, extended family members, neighbors, teachers, and treatment personnel;
  - 3. Details of visits to the parent's and child's past or current homes;
  - 4. A list of all places the child has lived, while in Tribal custody, and with whom and in what kind of placement;
  - 5. Information regarding the nature of the reported charges, and the information supporting or contravening those charges; and
  - 6. Any other information gathered in the course of the investigation and pre-adjudicatory service to the family; and
- B.** Describe beda?chelh's assessment of services needed to prevent or eliminate the need for removal of the child from parental care, and a description of all beda?chelh's efforts to locate, secure, offer, and refer the family to those services;
- C.** Describe all reasonable efforts made to prevent the removal of the child from the care of the parent, guardian, or custodian, and to eliminate the need for removal;
- D.** Set out recommendations for placement, reasons for choosing that placement, assurance that the placement is the least restrictive, most family-like setting available to meet the child's needs and is in close proximity to the parent and, if the child is not to be placed with a relative, extended family member, or a familiar person, reasons why not;
- E.** Specify, if necessary, the identified concurrent, alternative permanent plan for the child, in the event reunification does not occur, either because of parental non-compliance or because it is determined not to be in the best interests of the child, the family, and/or the Tribe. This concurrent 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. Specify what efforts have been made to make that placement available if necessary;
- F.** Draw conclusions and make recommendations as to what is in the best interests of the child, and how best to protect the child's health and safety to prevent removal or make return to parental care possible or, if that is not possible, to effect a different permanent plan. Specify what reasonable efforts have been made to prevent or eliminate removal, and what future reasonable efforts are needed to continue progress towards reunification;
- G.** Make recommendations to the Court regarding disposition.

**81.2.9.4 CASE PLAN.** In every case in which a child is found to be within the jurisdiction of the Court, beda?chelh shall prepare and submit a case plan to the Court at the Dispositional Hearing. The case plan shall be consistent with the best interests and special needs of the child, and shall:

- A.** Be developed by beda?chelh with the assistance and involvement of the family, relatives, extended family, and other relevant participants, whenever possible, under a Family Unity Model approach. The report shall name the participants and their relationship to the case;
- B.** Provide a detailed and specific plan for care of, and assistance to, the child and family, which plan is calculated to prevent or eliminate the need for removal of the child from parental care, and resolve the problems adjudicated in the Petition. The plan shall include, but not be limited to:
  - 1. Description of the family's needs;
  - 2. Description of services which will be required to address those needs;

3. Designation of who will provide those services, when, and how;
4. Timelines to which the family and beda?chelh will be held for completion of services;
5. Description of how the family's progress, or lack of progress, will be measured; and

**C.** If the child is placed out of parental care, set out in detail the visitation which beda?chelh will provide between the child and parent, guardian, or custodian, and relatives, if appropriate.

**81.2.9.5 WARD OF THE COURT / DURATION OF WARDSHIP.** If the Court finds that the child is a Youth-in-Need-of-Care, the Court may make the child a Ward of the Court. The Court's wardship over the child continues, and the child is subject to the Court's jurisdiction, until one of the following occurs:

- A.** The Court dismisses the case concerning the child, or enters an order terminating wardship and temporary custody;
- B.** The child becomes 18 years old, and has not been thereafter continued in the jurisdiction of the Court;
- C.** The child is emancipated by marriage or Court order; or
- D.** A Decree of Adoption of the child is entered by a Court.

**81.2.9.6 TEMPORARY PHYSICAL CUSTODY CONDITIONS THAT MAY BE IMPOSED.** When a child who is a Ward of the Court is placed in the temporary legal custody of beda?chelh, or another custodian, as set forth above, the Court may direct that the child be placed in the temporary physical custody of someone other than the legal custodian, for supervision by the legal custodian. Temporary physical custody may be placed in a parent, a foster parent, a relative, an extended family member, a child or youth care center, or a similarly appropriate custodian. The Court may impose such conditions and restrictions on the temporary physical custodian as necessary to protect the health, safety, and welfare of the child, and as are in the child's best interests.

**81.2.9.7 REQUIRED FINDINGS / REASONABLE EFFORTS / CONCURRENT PLANNING.** When the Court enters an order removing a child from the legal custody of a parent, guardian, or custodian, and placing the child in the temporary legal custody of beda?chelh or placing the child in the temporary physical custody of the parent, or other custodian, or when the Court enters an order continuing temporary legal custody in beda?chelh; the Court shall set forth written findings, including:

- A.** Whether removal of the child from the legal custody of the parent, guardian, or custodian was, and continues to be, in the best interests of the child; whether placement of the child out of parental care was and continues to be in the best interests of the child. The Court will consider the child's health, safety, and welfare;
- B.** Whether reasonable efforts, considering the circumstances of the child and parents, have or have not been made by beda?chelh to prevent or eliminate the need for removal of the child from parental care and to make it possible to reunify the family;
- C.** In support of its determination of whether or not reasonable efforts have been made by beda?chelh, the Court shall enter a description of what preventive and reunification efforts were made and why further efforts could or could not have prevented or shortened the separation of the family;
- D.** Where the initial contacts with the family have occurred during an emergency in which the child could not safely remain in parental care, even with reasonable services being provided, beda?chelh shall be considered to have made reasonable efforts to prevent or eliminate the need for removal of the child;
- E.** Where the Court finds that reasonable preventive or reunification efforts have not been made, but that such efforts, even if made, could not have prevented the removal of the child for the child's health, safety, and welfare, beda?chelh shall be considered to have made reasonable efforts to prevent or eliminate the need for removal of the child;
- F.** Where the Court finds that further preventive or rehabilitative services could prevent or eliminate the need for removal of the child, the Court may authorize or continue the removal of the child; however, the Court shall enumerate the efforts which must be made to support a future finding that beda?chelh has made reasonable efforts to prevent or eliminate the need for removal of the child;
- G.** Whether the case plan is designed to make reunification of the family likely, and what efforts beda?chelh is making to implement that plan;

**H.** If necessary at the time, whether the case reflects a concurrent, alternative permanent plan for the child, and what efforts beda?chelh is making to develop and implement that plan, in the event the child cannot be returned to parental care;

**I.** Reasonable efforts are not required, but may be offered at the discretion of beda?chelh, and with approval of the Court, where:

1. the parent has been convicted of involvement in the murder or voluntary manslaughter of any child;
2. the parent has been convicted of felony assault that resulted in serious bodily injury to the child or another child, or step-child of the parent, or to any child of a partner with whom the parent is cohabiting or is in a cohabiting-type relationship; or
3. the Court, or a court of competent jurisdiction, has determined that the parent has subjected the child to aggravated circumstances including, but not limited to, torture, chronic sexual abuse, and/or chronic physical abuse.

**81.2.9.8 CONDITIONS SET BY THE COURT.** The conditions or restrictions which the Court may set upon a child, parent, guardian, custodian, or any other person, shall be designed to improve the circumstances of the child.

1. Such conditions or restrictions include, but are not limited to: cooperation with beda?chelh; compliance with case plan and/or service agreement; participation in beda?chelh meetings for the purpose of case planning; medical, psychological or psychiatric evaluation and treatment; individual and/or family counseling; prescriptive therapy; alcohol/drug evaluation and treatment; sex offender evaluation and treatment; domestic violence counseling; anger management classes; parenting classes; mediation to resolve family or other disputes; visitation with the child with or without restrictions; attendance at child's school functions; participation in Tribally-sponsored activities; restrictions on contact, associations, or travel; payment of support or other necessary costs; and cooperation with and participation in all services in which the child is engaged, including on-site residential or institutional services.
2. The Court shall enter specific findings setting out in detail the reasons for the conditions imposed in the order.

#### **81.2.9.9 PLACEMENT PROVISIONS.**

**A. Placement Priorities:** When a Youth-in-Need-of-Care has been placed in the temporary legal custody of beda?chelh, and cannot be released to a parent, guardian, or custodian, beda?chelh shall, whenever possible, considering foremost the best interests of the child and the child's health, safety, and welfare, place the child in the temporary physical custody of one of the following, in order of preference and priority:

1. Relatives or extended family members;
2. Private Tribal home, licensed or approved by beda?chelh, close to the parental home;
3. Private Native home, licensed or approved by beda?chelh, close to the parental home;
4. Private non-native home, licensed or approved by beda?chelh, close to the parental home; or
5. In an emergency placement;
6. [provision for confidential placement].

**B. Other Placement:** Notwithstanding the above, beda?chelh, with good cause shown, shall have the discretion to place the child in a placement that serves the best interests of the child; this may include a confidential placement, the location of which will be disclosed only to the court.

**C. Siblings:** Siblings shall be placed together whenever possible, if it is in their best interests to do so.

**D. Least Restrictive Placement:** A child shall be placed in the least restrictive placement available to meet the child's treatment needs.

**E. Proximity to Parent:** A child shall be placed in as close proximity to the parent as possible, to facilitate and encourage visitation and reunification unless such placement is not in the best interest of the child.

**F. Agreements with Service Providers:** Whenever a child is placed out of parental care in the care of a foster parent, a facility, or other custodian, or whenever a child receives services from a professional, such as a counselor, the Court shall require, as a prerequisite, that the custodian and/or service provider be notified in writing by beda?chelh that their presence in Court may be required upon occasion for the giving of testimony, or that a written report to the Court may be required. Agreement thereafter to foster, treat, or serve the child will be deemed to be consent to so participate in Court proceedings.

**G. Placements outside the Tulalip Tribes:** Placement of a child with anyone who is not a member of the Tulalip Tribes or who does not reside on the Tulalip Reservation shall be contingent on the person's written agreement to accept the jurisdiction of the Tulalip Tribal Court and to cooperate fully with beda?chelh.

**81.2.9.10 FINAL ORDER.** A Dispositional Order is a final order for purposes of appeal.

#### **81.2.10 YOUTH-IN-NEED-OF-CARE - STATUS REVIEW HEARINGS; PERMANENT PLAN HEARING**

**81.2.10.1 WHO MAY REQUEST REVIEW HEARINGS.** Any party, including but not limited to the custodian, may request a review hearing at any time. Upon receiving a motion or request for review, the Court will examine the substance of the request, and may set a hearing at the Court's discretion if there appears to be a justiciable reason to do so.

#### **81.2.10.2 STATUS REVIEW HEARINGS.**

**A. Status Review Hearings Required:** Within ninety (90) *calendar* days of the original dispositional hearing, and at least every six (6) months thereafter so long as a child remains within the jurisdiction and a permanent plan for the child has not yet been established by Court order, the status of the child will be reviewed to:

1. Determine the continuing need for, and appropriateness of, Court jurisdiction and of the child's placement;
2. Determine the extent of compliance by all parties with the case plan;
3. Determine the extent of progress the parent has made toward eliminating the need for removal of the child from parental care, including, but not limited to, the efforts at compliance with required services, and whether sufficient progress is being made to consider return home likely in the near future;
4. Consider whether the services provided to the family have been appropriate, accessible, and provided in a timely manner; further consider whether the ICW Program can reasonably provide additional services which will facilitate the return of the child to parental care;
5. Assess beda?chelh's concurrent case planning, if any, and the Program's efforts to effect an alternative permanent plan for the child in the event there is insufficient progress to restore custody;
6. Determine whether reasonable efforts are being made by beda?chelh to alleviate the need for removal of the child from parental care; and
7. Project a likely date when the child will be returned to parental care or when an alternative permanent plan will be put into effect.

**B. Notice of Status Review Hearing:** The Court clerk shall issue notice of the Status Review Hearing at least twenty (20) *calendar* days before the hearing is scheduled to take place.

1. Notice shall include:
  - a. The date, time, and place of the hearing; and
  - b. A statement indicating that the rights of the legal custodian, guardian, parent or parents may be affected in the proceeding and that if the legal custodian, guardian, parent or parents fail to appear at the time and place specified in the summons, the Court may take legal custody of the child from the parent, guardian, or custodian, make the child a ward of the Court, and take any other action that is authorized by law; and
2. Notice shall be served via first class and certified mail, return receipt requested on:
  - a. The child who is the subject of the petition if twelve (12) years of age or older;
  - b. The child's parent, current guardian, or custodian;
  - c. Any person the parties or the Court deem necessary for proper adjudication; and
  - d. If the child is not enrolled in the Tulalip Tribes, any tribe the child is enrolled in or is eligible for enrollment.
3. If any party's current address is unknown, the notice shall be published in a regularly published newspaper of the last known area the party resided in.
4. Service shall be made by any person over the age of eighteen (18) who is not a party to the proceedings.

**C. Continuance of Status Review Hearing:** Status Review Hearing shall occur within six (6) months unless exceptional reasons for a continuance are found. The party requesting the continuance shall have the burden of proving by a preponderance of the evidence that exceptional circumstances exist.

**D. Status Review Reports:** *bedaqchelh* shall prepare, and any other party or person may prepare, a report to the Court for the hearing unless the court deems a written report unnecessary. These reports shall be filed, and copies shall be given to all parties or sent to the address on record with the court twenty (20) calendar days before the hearing, except by order of the Court. The Program's report shall provide supportive documentation if appropriate, and shall:

1. Summarize the history of the case and efforts made to offer services to the child and family;
2. Detail the child's and family's circumstances, including the case management and casework by *bedaqchelh*, since the prior Court hearing;
3. Detail the compliance made or not made by the parent, guardian, or custodian and *bedaqchelh*; and
4. Detail the efforts made to develop a concurrent plan to be implemented in the event the family cannot be reunified, or why a concurrent plan is not practical at this time, and efforts made to implement that concurrent permanent plan.

**E. Presumption in Favor of Return to Parent:** The Court shall return a child to the physical custody of the parent, guardian, or custodian, unless *bedaqchelh* shows good cause why returning the child would not be in the child's best interests.

### **81.2.10.3 PERMANENT PLAN HEARING.**

**A. Permanent Plan Hearing Required:** Within twelve (12) months of the date the child is removed from parental care, or the date of the adjudicatory order making the child a Ward of the Court, whichever comes first, the Court shall hold a Permanent Plan Hearing to determine the permanent status of the child. The Permanent Plan Hearing may be combined with a Status Review Hearing.

**B. Notice of Permanent Plan Hearing:** The Court clerk shall issue notice of the Permanent Plan Hearing at least twenty (20) *calendar* days before the hearing is scheduled to take place.

1. Notice shall include:

- a. The date, time, and place of the hearing; and
  - b. A statement indicating that the rights of the legal custodian, guardian, parent or parents may be affected in the proceeding and that if the legal custodian, guardian, parent or parents fail to appear at the time and place specified in the summons, the Court may take legal custody of the child from the parent, guardian, or custodian, make the child a ward of the Court, and take any other action that is authorized by law; and
2. Notice shall be served via first class and certified mail, return receipt requested on:
    - a. The child who is the subject of the petition if twelve (12) years of age or older;
    - b. The child's parent, current guardian, or custodian;
    - c. Any person the parties or the Court deem necessary for proper adjudication; and
    - d. If the child is not enrolled in the Tulalip Tribes, any tribe the child is enrolled in or is eligible for enrollment.
  3. If any party's current address is unknown, the notice shall be published in a regularly published newspaper of the last known area the party resided in.
  4. Service shall be made by any person over the age of eighteen (18) who is not a party to the proceedings.

**C. Permanency Planning Reports:** beda?chelh shall prepare, and any other party or person may prepare, a report to the Court for the hearing. These reports shall be filed, and copies shall be given to all parties or sent to the address on record with the court twenty (20) calendar days before the hearing, except by order of the Court. beda?chelh's report shall provide supportive documentation, if appropriate, and shall:

1. Summarize the history of the case and efforts made to offer services to the child and family;
2. Detail the child's and family's circumstances, including the case management and casework by beda?chelh, since the prior Court hearing;
3. Detail the compliance made or not made by the parent, guardian, or custodian and beda?chelh;
4. Detail the efforts made to develop a concurrent plan, if necessary, to be implemented in the event the family cannot be reunified, and efforts made to implement that concurrent permanent plan;
5. Give specific reasons why the particular recommended permanent plan has been chosen, specifying why that plan meets the child's particular needs and best interests, rather than other permanent plans which have not been chosen; and
6. If required by applicable federal law, detail the compelling reasons why termination of parental rights is not being recommended as the permanent plan.

**D. Permanent Plans:** The Court may approve by Court Order, but is not limited to, any of the following permanent plans:

1. Return of Custody: The child will be returned to a parent;
2. Termination of parental Rights; Adoption: That a Petition for the Termination of Parental Rights be filed and that the permanent plan of the child shall be adoption;
3. Legal Guardianship: A Legal Guardian be appointed for the child;
4. Permanent Foster Care: The child be placed in Permanent Foster Care of named custodians;
5. Long Term Substitute Care: The child, because of his/her special needs, be placed in Long Term Substitute Care, until such time as the child can accommodate a less restrictive plan.

**81.2.10.4 PARENTAL RIGHTS.** In any of the permanent plans identified above, the parent, guardian, or custodian has the following rights, which are to be determined in light of the child's best interests:

**A. Return of Custody.** The right to seek return of full legal and physical custody of the child and

termination of Wardship.

**B. Termination of Parental Rights; Adoption.** If parental rights are terminated the parent has no parental rights, except as specified in any termination order or adoption order.

**C. Legal Guardianship.** The right to seek visitation: The right to petition the Court no more than once a year for return of custody. At any hearing on the Petition for Return of Custody the Petitioner must show by clear and convincing evidence that there has been a substantial change of circumstances and that it is in the best interests of the child to be returned to parental care. A hearing on the Petition will be set only if the Petition states a prima facie showing in the Petition to the Court.

**D. Permanent Foster Care.** The right to seek visitation. The right to petition the Court no more than once a year for return of custody. At any hearing on the Petition for Return of Custody the Petitioner must show by clear and convincing evidence that there has been a substantial change of circumstances and that it is in the best interests of the child to be returned to parental care. A hearing on the Petition will be set only if the Petition states a prima facie showing in the Petition to the Court.

**E. Long Term Substitute Care:** Depending on the circumstances of the case, the right to seek visitation and/or return of custody.

**81.2.10.5 BEDA?CHELH OBLIGATIONS.** In any of the permanent plans identified above, beda?chelh has the following obligations to the parent, guardian, or custodian:

**A. Return of Custody:** beda?chelh is obligated to continue to provide services designed to result in the return of the child to parental custody.

**B. Termination of Parental Rights Adoption:** Once a Petition to Terminate Parental Rights is filed, beda?chelh has no further obligation to offer services to the parent.

**C. Legal Guardianship:** beda?chelh has no obligation to the parent, guardian, or custodian.

**D. Permanent Foster Care:** beda?chelh is obligated to facilitate court-ordered visitation.

**E. Long Term Substitute Care:** beda?chelh is obligated to facilitate any Court-ordered visitation. Depending on the circumstances of the case, beda?chelh may or may not have any obligation to offer other services to the parent.

**81.2.10.6 FURTHER FINDINGS REQUIRED.** In addition, the Court must enter written findings as follows:

**A.** Whether beda?chelh has made reasonable efforts to prevent removal of the child from parental care, and if removal could not have been prevented, whether beda?chelh has made reasonable efforts to alleviate and eliminate the need for removal of the child from parental care. In support of its determination of whether or not reasonable efforts have been made by beda?chelh, the Court shall enter a description of what preventive and reunification efforts were made and why further efforts could or could not have prevented or shortened the separation of the family;

**B.** If necessary, whether beda?chelh has engaged in concurrent planning to develop an alternative permanent plan for the child in the event that the parent, guardian, or custodian is unable to improve his or her circumstances sufficiently to retrieve custody of the child. The Court shall state specifically what those concurrent planning efforts have been. In the event that the concurrent planning is not developed, reasons why such planning is not necessary.

**C.** The Court shall specify why permanent plans, other than the one selected, are not in the best interests of the child and that this is the least restrictive placement for the child; and

**D.** In all cases in which the Court does not direct the filing of a Petition to Terminate Parental Rights, the Court shall specify compelling reasons why termination of parental rights should not be sought, and would not be in the best interests of the child. Such findings must be supported by the bedachelh case plan and record.

1. Compelling Reasons Defined: In determining whether compelling reasons exist for not terminating parental rights, the Court shall consider, but not be limited to, the following:
  - a. Tribal custom and tradition,
  - b. Tribal policy, whether oral or written, whether by custom, resolution, or ordinance, disfavoring or prohibiting termination of parental rights;
  - c. The relationship between the parent and child;
  - d. The relationship between the child and the Tribe;
  - e. The best interests of the child, including, but not limited to, the health and safety of the child;
  - f. The special needs of the child;
  - g. The Tribe's interest in maintaining the parent-child status, and the child's contact with the Tribe; and
  - h. Any other relevant considerations.

**81.2.10.7 CONDITIONS SET BY THE COURT.** In designating a permanent plan for the child, the conditions or restrictions which the Court may set upon a child, parent, guardian, custodian, or any other party shall be as set forth in 81.2.7.3.(H).

**81.2.10.8 PERMANENCY PLAN REVIEW HEARINGS.** The Court shall review the permanent plan of a child at least annually as follows:

- A.** No Permanent Plan Review Hearing need be held for any child who has been adopted.
- B.** If the child is a Ward of the Court in the custody of a court-appointed Legal Guardian, the Legal Guardian shall be responsible for submitting a report to the Court on a yearly basis. If the Court deems a Permanent Plan Review Hearing to be necessary, the Legal Guardian is responsible for appearing at and providing information for, the hearing.
- C.** In all other cases in which the child remains a Ward of the Court, bedachelh shall be responsible for submitting a report to the Court on a yearly basis and is responsible for appearing at, and providing information for a Permanent Plan Review Hearing of the child's plan.
- D.** The legal custodian shall be responsible for immediately notifying the Court of any changes in the child's placement or any substantial changes in the permanent plan.

**81.2.10.9 FINDINGS REQUIRED.** At the Permanent Plan Review Hearing conducted by the Court after the establishment of the permanent plan, the Court shall determine:

- A.** The continued appropriateness of the placement and the permanent plan;
- B.** The extent of compliance with the permanent plan;
- C.** The adequacy of services provided to the child and custodian in the permanent placement; and
- D.** Whether other services are necessary to support the permanent plan, and if such services can be reasonably provided by the Court or bedachelh.

**81.2.10.10 FINAL ORDER.** A Status Review or Permanent Plan Order is a final order for the purposes of appeal.

## **82.2.11 YOUTH-IN-NEED-OF-CARE - LEGAL GUARDIANSHIP; ADOPTION**

### **81.2.11.1 LEGAL GUARDIANSHIP.**

**A. Policy:** It shall be the policy of the Tribe to prefer guardianship over adoption as a placement option for a Youth-in-Need-of-Care, where the permanent plan is not inconsistent with other provisions of this Ordinance. It shall further be the policy of the Tribe to prefer guardianships that maintain and preserve the child's connection to the Tribe and child's family.

**B. Preference for Appointment of Guardian:**

1. The order of preference for appointing a guardian, in the absence of good cause to the contrary, shall be:
  - a. A person who was indicated by the wishes of a deceased parent as indicated in a will or similar instrument;
  - b. Family members;
  - c. Extended family members;
  - d. A member of the Tulalip Tribes living on or near the Tulalip Reservation;
  - e. A member of another Indian tribe residing on or near the Tulalip Reservation;
  - f. A member of the Tulalip Tribes residing off the Tulalip Reservation; or
  - g. A member of another Indian tribe residing off the Tulalip Reservation.
2. If the order of preference cannot be met, placement shall be with any person who has a knowledge of and desire to foster the youth's tribal affiliation and cultural needs.
3. In the Court's discretion, the placement preference of the youth, his or her parents, guardian, or other custodian may be considered but may not be the controlling factor in determining placement;
4. Only in exceptional circumstances and for good cause shown may a non-Indian guardian or non-Indian facility be appointed guardian.
5. The appointment of a guardian shall be governed by the best interests of the youth who is the subject of the guardianship.
6. If more than one sibling is having a guardian appointed, preference shall be given to a qualified person or facility that can serve as guardian for all siblings.

**81.2.11.2 YOUTH'S PREFERENCE FOR GUARDIAN.** When the youth who is the subject of the petition for guardianship is fourteen (14) years of age or older, the Court shall consider his or her preference in appointing a guardian.

**A. Procedures for Filing Petition for Legal Guardianship.**

1. Filing of Petition:
  - a. Who May File Petition for Legal Guardianship: Any person petitioning for legal guardianship must be an adult.
  - b. Contents of the Petition: A Petition for Legal Guardianship shall be verified under oath by Petitioner(s) and shall contain the following information:
    - i. The full name, residence, date and place of birth, sex of the child, with attached documentary proof of the date and place of the birth of the child;
    - ii. The names of the persons with whom the child has lived, the residences at which the child has lived, for the previous year, and the length of time the child has lived with each person and at each residence;
    - iii. The names and residences of the child's legal parents, guardians, or custodians. In addition, the names and residences of putative fathers or stepparents, if any;
    - iv. Documentary proof of the child's membership status in the Tribe;
    - v. The full name, residence, date and place of birth, occupation of the Petitioner(s), statement of relationship to the child, proof of tribal membership descendance, if applicable;
    - vi. A statement by Petitioner(s) of the desire that a relationship of legal guardian and child be established between Petitioner(s) and the child;
    - vii. An agreement to maintain ties with the Tribe and where appropriate with extended family members; and
    - viii. A citation to the specific section of this Ordinance giving the Court jurisdiction of the proceedings.

**81.2.11.3 SERVICE OF THE PETITION FOR GUARDIANSHIP.**

- A.** Service of the Petition for Guardianship shall be personally served on:
1. The child's parent, current guardian, or custodian;
  2. The child who is the subject of the petition for guardianship if he or she is fourteen (14) years of age or older;
- B.** Notice shall be served via first class and certified mail, return receipt requested on:
1. beda?chelH Presenting Officer;
  2. Any person the parties or the Court deem necessary for proper adjudication; and
  3. If the child is not enrolled in The Tulalip Tribes, any tribe the child is enrolled in or is eligible for enrollment.
- C.** If any party who is required to be personally served is outside the Tribes' service area, service shall be by certified mail, return receipt requested, or by any other means reasonably designed to give notice.
- D.** If any party's current address is unknown, the Petition shall be published in a regularly published newspaper of the last known area the party resided in.
- E.** Service shall be made by any person over the age of eighteen (18) who is not a party to the proceedings.
- F. Notice of Hearing:**
1. The Court clerk shall issue notice of the Hearing for Guardianship at least twenty (20) **calendar** days before the hearing is scheduled to take place. Notice shall include:
    - a. The date, time, and place of the hearing and a copy of the Petition for Guardianship; and
    - b. A statement to the effect that the rights of the parent or parents may be affected, that certain persons are proposed to be appointed as legal guardians in the proceedings, and that if the parent or parents fail to appear at the time and place specified in the summons, the Court may appoint those persons as legal guardians and take any other action that is authorized by law.
  2. Notice shall be served via first class and certified mail, return receipt requested on:
    - a. The Petitioner;
    - b. The child who is the subject of the petition;
    - c. The child's parent, current guardian, or custodian;
    - d. beda?chelH;
    - e. Any person the parties or the Court deem necessary for proper adjudication; and
    - f. If the child is not enrolled in The Tulalip Tribes, any tribe the child is enrolled in or is eligible for enrollment.
  3. If any party who is required to be personally served is outside the Tribes' service area, service shall be by certified mail, return receipt requested, or by any other means reasonably designed to give notice.
  4. If any party's current address is unknown, the notice shall be published in a regularly published newspaper of the last known area the party resided in.
  5. Service shall be made by any person over the age of eighteen (18) who is not a party to the proceedings.

**81.2.11.4 BEDA?CHELH GUARDIANSHIP REPORT.** Upon receipt of a Petition for Legal Guardianship, beda?chelH shall investigate any party to be appointed as a legal guardian, conduct a complete home study, and shall prepare and submit a written report to the Court and serve it by certified mail on all

parties no later than twenty (20) *calendar* days before the Guardianship Hearing.

- A. The report shall address the suitability and character of the legal guardian, including, but not limited to, the financial, physical, and general background of the legal guardian and his/her home.
- B. The report shall reflect contact with all appropriate agencies and individuals who have relevant knowledge and information.
- C. The report shall contain beda?chelh's recommendation regarding the legal guardianship, and whether beda?chelh believes that such legal guardianship will be in the best interests of the child.
- D. A copy of the report shall be served on Petitioner at the same time it is presented to the Court.

**81.2.11.5 OTHER AGENCIES/INDIVIDUALS.** The Court may order other 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 legal guardianship. A copy of all reports shall be served on Petitioner at the same time they are presented to the Court.

**A. Hearing:**

1. Purpose/Time Limit: A hearing shall be commenced within ninety (90) days of filing of a Petition for Legal Guardianship, except when extended by Court order, to determine if it is in the child's best interests to be appointed a legal guardian.
2. Procedure at Hearing: Petitioner(s) and beda?chelh shall appear personally at the hearing.
3. Judicial Inquiry: The Court shall inquire of all persons appearing as to whether the best interests of the child will be promoted by the legal guardianship.

**81.2.11.6 TERM RIGHTS AND DUTIES OF LEGAL GUARDIAN.** A legal guardian appointed by the Court shall have the custody of; and be responsible for all care of, the child and the care and management of his/her property until the child reaches the age of eighteen (18), marries, is emancipated by the Court, or until the legal guardian is legally discharged, or wardship over the child is terminated, or custody is transferred back to beda?chelh; provided, however, that the legal guardian shall not have the authority, without express written consent of the Court, to dispose of any real property or Tribal member benefits of the child in any manner. The legal guardian shall also have the authority to consent to the medical care and treatment of the child, and to otherwise have those rights of a parent of the child. The legal guardian shall be responsible for reporting to the Court on a yearly basis, or more often, as required by the Court.

**81.2.11.7 DETERMINATION BY THE COURT.** At the conclusion of the Guardianship Hearing, the Court shall make written findings as to whether there is clear and convincing evidence that the guardianship is in the best interests of the child.

**81.2.11.8 ORDER.** An Order Establishing Legal Guardianship shall be considered a final order for the purposes of appeal.

**81.2.12 YOUTH-IN-NEED-OF-CARE - TERMINATION OF PARENTAL RIGHTS;  
RELINQUISHMENT OF PARENTAL RIGHTS**

**81.2.12.1 TERMINATION OF PARENTAL RIGHTS.**

- A. **Purpose.** The purpose of this chapter is to set forth procedures that when followed, allow the Tulalip Tribal Court to issue a decree to terminate the legal relationship between a parent and a child. Termination of parental rights shall be considered an option of last resort. 81.7.1
- B. **Effect.** The effect of such decree is to permanently end the parent-child relationship, to relieve the parent of all rights and responsibilities with respect to the child, and to sever all legal relationships, including all rights of intestate distribution and succession, custody, control and financial responsibility, but shall not affect other familial, religious or tribal relationships arising out of the natural parent/child relationship.

**C. Policy:** beda?chelh shall evaluate every child in Tribal custody, to determine whether termination of parental rights is in the child's best interests. In making that determination, the Program shall consider the following Tribal Policy:

1. The Tribe will support termination of parental rights if the child is in a Tribally-approved or relative placement, an adoptive resource is available, and one of the following conditions exist:
  - a. The parent has committed murder of another child of the parent, or of the child's parent;
  - b. The parent has committed voluntary manslaughter of another child of the parent, or of the child's parent;
  - c. The parent has aided or abetted to commit murder of another child of the parent, or of the child's parent;
  - d. The parent has committed a felony assault that results in serious bodily injury to the child, or to another child of the parent; or
  - e. The parent has subjected the child to, or inflicted upon the child, extreme physical, sexual, or emotional abuse.
  
2. The Tribe may support a termination of parental rights if the child is in a Tribally-approved or relative placement, an adoptive resource is available, and termination of parental rights is in the best interests of the child. In determining the best interests of the child, the following factors shall be considered. If a majority of such factors exist, termination of parental rights shall be deemed to be in the child's best interests.
  - a. Abandonment of the child. Abandonment may include, but is not limited to, failure of the parent to maintain regular visitation or other contact with the child for a substantial period of time.
  - b. Emotional illness, mental illness or mental deficiency of the parent is of such duration or nature as to place the child's physical or mental health at risk.
  - c. Substantial history of drug and/or alcohol abuse by the parent while the child is in custody.
  - d. Imprisonment of the parent for a period of three (3) or more years while the child is in custody.
  - e. An appropriate parent-child relationship does not exist.
  - f. The child has been in custody for a substantial period of time.
  - g. The existence of non-Tribal siblings.
  - h. Any other factors beda?chelh deems relevant to make a determination regarding the best interests of the child.
  
3. For purposes of this section the term "relative" is defined as any person eighteen (18) years of age or older who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, stepparent, or anyone deemed by beda?chelh to be a psychological relative.

**81.12.2 COURT AUTHORITY AND SCOPE.** The Court may terminate a parent's rights upon a Petition filed by beda?chelh, the parent, guardian, custodian, or the child for the purpose of freeing the child for adoption only if the Court finds evidence beyond a reasonable doubt that termination is in the child's best interests, including testimony of a qualified expert witness that parental custody of the child is likely to result in serious emotional or physical harm to the child. The rights of one parent may be terminated without affecting the rights of the other parent.

**81.2.12.3 PROCEDURES FOR FILING A PETITION TO TERMINATE PARENTAL RIGHTS.**

**A. Filing the Petition:**

1. Who May File a Petition to Terminate Parental Rights: beda?chelh or the child may file a Petition to Terminate Parental Rights.

2. When Filing a Petition is Required in Cases Subject to Title I'VE: Except as provided in subsection (iii) below, in all Title I'VE cases beda?chelh shall file a Petition to Terminate Parental Rights of a Youth-in-Need-of-Care if one of the following exists:
  - a. A Youth-in-Need-of-Care has been in the custody of beda?chelh and in substitute care fifteen (15) of the last twenty-two (22) months;
  - b. A court of competent jurisdiction has determined that the child is an abandoned child; or
  - c. A court of competent jurisdiction has determined that the parent:
    - i. committed murder of another child of the parent;
    - ii. committed voluntary manslaughter of another child of the parent;
    - iii. aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of the parent; or
    - iv. committed felony assault that has resulted in serious bodily injury to the child or to another child of the parent.
  
3. When Filing a Petition is not Required: beda?chelh is not required to file a Petition to Terminate Parental Rights if one of the following exists and the Court has entered written findings that:
  - a. The child is being adequately cared for by a relative;
  - b. beda?chelh has documented in the case plan compelling reasons that termination of parental rights would not be in the best interests of the child. Such compelling reasons include, but are not limited to:
    - i. The parent is successfully working to complete a service agreement;
    - ii. Another permanent plan is better suited to meet the health and safety needs of the child;
    - iii. There are insufficient factors present under Tribal policy to conclude that termination of parental rights is in the best interests of the child; or
  - c. beda?chelh has not provided to the family of the child, consistent with the time period in the case plan, such services as the Program deems necessary for the safe return of the child to parental care.
  - d. Nothing in this section precludes beda?chelh, in its sole discretion from filing a Petition to Terminate Parental Rights in these cases.
  
4. Contents of the Petition: A Petition to Terminate Parental Rights shall be signed under oath by the Petitioner and shall contain the following information:
  - a. The full name, residence, date and place of birth, tribal affiliation, sex of the child, with attached documentary proof of the date and place of the birth of child;
  - b. The names of the persons with whom the child has lived, the residences at which the child has lived, for the previous year, and the length of time the child has lived with each person and at each residence;
  - c. The names and residences of the child's parents, guardians, or custodians. In addition, the names and residences of putative fathers, and step-parents, if any;
  - d. If the child is in a detention or care facility, the place of detention or shelter care, and the date and time he or she was taken into custody;
  - e. The facts upon which the Petition is based, including, but not limited to, the bases set forth in (E) below, and which, if true, would prove beyond a reasonable doubt that it is in the child's best interests to terminate parental rights.

**81.2.12.4 SERVICE OF THE PETITION TO TERMINATE PARENTAL RIGHTS.**

- A. Service of the Petition to Terminate Parental Rights shall be personally served on:
  1. The child's parent, current guardian, or custodian;
  2. The child who is the subject of the petition to terminate parental rights if he or she is fourteen (14) years of age or older;
  3. Notice shall be served via first class and certified mail, return receipt requested on:

- a. Tulalip Family Services;
  - b. beda?chelh Presenting Officer;
4. Any person the parties or the Court deem necessary for proper adjudication; and
  5. If the child is not enrolled in The Tulalip Tribes, any tribe the child is enrolled in or is eligible for enrollment.
  6. If any party who is required to be personally served is outside the Tribes' service area, service shall be by certified mail, return receipt requested, or by any other means reasonably designed to give notice.
  7. If any party's current address is unknown, the Petition shall be published in a regularly published newspaper of the last known area the party resided in.
  8. Service shall be made by any person over the age of eighteen (18) who is not a party to the proceedings.

**81.2.12.5 SETTING THE TERMINATION OF PARENTAL RIGHTS HEARING.** The Court may order other 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 legal guardianship. A copy of all reports shall be served on Petitioner at the same time they are presented to the Court.

**A. Hearing:**

1. Purpose/Time Limit: A hearing shall be commenced within ninety (90) *calendar* days of filing of a Petition for Legal Guardianship, except when extended by Court order, to determine if it is in the child's best interests to be appointed a legal guardian.
2. Procedure at Hearing: Petitioner(s) and beda?chelh shall appear personally at the hearing.
3. Judicial Inquiry: The Court shall inquire of all persons appearing as to whether the best interests of the child will be promoted by the legal guardianship.

**B. Notice of Hearing**

1. The Court clerk shall issue notice of the Hearing to Terminate Parental Rights at least twenty (20) days before the hearing is scheduled to take place. Notice shall include:
  - a. The date, time, and place of the hearing and a copy of the Petition to Terminate Parental Rights; and
  - b. A statement to the effect that the rights of the parent or parents are proposed to be terminated in the proceeding and that if the parent or parents fail to appear at the time and place specified in the summons, the Court may terminate parental rights and take any other action that is authorized by law.
2. Notice shall be served via first class and certified mail, return receipt requested on:
  - a. The Petitioner;
  - b. The child who is the subject of the petition to terminate parental rights if he or she is fourteen (14) years of age or older;
  - c. The child's parent, current guardian, or custodian;
  - d. beda?chelh;
  - e. Any person the parties or the Court deem necessary for proper adjudication; and
  - f. If the child is not enrolled in The Tulalip Tribes, any tribe the child is enrolled in or is eligible for enrollment.
3. If any party who is required to be personally served is outside the Tribes' service area, service shall be by certified mail, return receipt requested, or by any other means reasonably designed to give notice.
4. If any party's current address is unknown, the notice shall be published in a regularly published newspaper of the last known area the party resided in.

5. Service shall be made by any person over the age of eighteen (18) who is not a party to the proceedings.

#### **81.2.12.6 PRE-TERMINATION REPORT.**

**A.** Upon Notice that a termination petition has been filed, beda?chelh shall conduct an investigation to determine whether termination of parental rights is consistent with the youth's best interests.

**B.** The investigation shall include a review of the youth's previous court record, including all previous reports prepared by beda?chelh.

**C.** Upon completion of the investigation, a pre-termination report which includes recommendations shall be prepared by beda?chelh.

**D.** The pre-termination report shall be in writing and presented to the Tribal Court at least ten (10) **calendar** days before the hearing for termination of parental rights.

**E.** Upon the petitioner's request, a pre-termination report may be waived at the discretion of the Court and beda?chelh.

**F.** The Court Clerk shall provide copies of the report to all the parties at least twenty (20) **calendar** days prior to the hearing.

#### **81.2.12.7 ADDITIONAL REPORTS.**

**A.** Any interested party may file a statement with the Court which shall include recommendations regarding Termination of Parental Rights.

**B.** Any interested party filing a statement with the Court shall provide copies of the statement to all other parties at least twenty (20) **calendar** days prior to the hearing to terminate parental rights.

**81.2.12.8 BASES OF TERMINATION OF PARENTAL RIGHTS.** The rights of the parent or parents may be terminated if the Court finds beyond a reasonable doubt that termination of parental rights is consistent with the Tribe's policy as set forth in Section (A)(1), it is in the child's best interests, and that one or more of the following exist:

**A. Extreme Conduct:** The parent or parents are unfit by reason of a single or recurrent incident of extreme conduct toward the child or another child. In determining extreme conduct, the Court shall consider, but is not limited to, the following:

1. Murder, manslaughter, rape, sodomy, or sex abuse of any child or the child's parent by the parent;
2. Intentional starvation or torture of any child by the parent;
3. Abuse or neglect by the parent of any child resulting in death or serious physical injury;
4. Conduct by the parent to aid or abet another person who, by abuse or neglect, caused the death of any child; and
5. Conduct by the parent to attempt to solicit or conspire to cause the death of any child, or the child's parent.

**B. Unfitness:** The parent or parents are unfit by reason of conduct or condition seriously detrimental to the child and integration of the child into parental care improbable within a reasonable time due to conduct or conditions not likely to change. In determining such conduct and conditions, the Court shall consider, but is not limited to, the following:

1. Emotional illness, mental illness or mental deficiency of the parent of such a nature and duration as to place the child's physical or mental health at risk, or to render the parent incapable of providing proper care for the child for extended periods of time;
2. Conduct toward any child of an abusive, cruel, or sexual nature;

3. Substantial history of alcohol and/or drug abuse by the parent while the child is in custody;
4. Addictive or habitual use of alcohol and/or drugs to the extent that parental ability has been substantially impaired;
5. Criminal conduct that impairs the parent's ability to provide adequate care for the child; and
6. Imprisonment (actual or pending) of parent for a period of three (3) years or more while the child is in custody.

**C. Neglect:** The parent or parents have failed or neglected, without reasonable and lawful cause, to provide for the basic physical and/or psychological needs of the child for a substantial period of time.

**D. Abandonment:** The parent or parents have abandoned the child or the child was left under circumstances such that the identity of the parent or parents of the child was unknown and could not be ascertained, despite diligent searching, and the parent or parents have not come forward to claim the child within six months after the child has been taken into custody, or the parent has failed, without good cause, to maintain regular visitation or other contact with the child for a substantial period of time.

**E. Other Factors:**

1. An appropriate parent-child relationship does not exist.
2. The child has been in custody for a substantial period of time.
3. The existence of non-Tribal siblings for the child.
4. Any other factors relevant to make a determination regarding the best interests of the child.

This Section (E) is intended to identify grounds for termination and not additional reasons to compel filing a Petition for termination of parental rights.

**81.2.12.9 HEARING FOR TERMINATION OF PARENTAL RIGHTS.**

1. The Hearing to terminate parental rights shall be private and closed. Only those person the Court determines to have a legitimate interest in the proceedings may be present.
2. The Court shall hear testimony to determine whether termination of parental rights is in the best interests of the youth and the Tribal community.
3. The Court shall consider the pre-termination report and all statements review.
4. All parties shall be given the opportunity to contest the factual contents and conclusions of the pre-termination report and all statements.
5. Parties involved in a termination proceeding before the Tribal Court shall have the right to be represented by counsel or spokesperson.

**81.2.12.10 TERMINATION ORDER.** A Court may enter an Order Terminating Parental Rights if it finds beyond a reasonable doubt that it is in the best interests of the youth and the Tribal community.

**81.2.12.11 EFFECT OF TERMINATION ORDER.** The Order Terminating Parental Rights permanently terminates all rights of the parent or parents, except as provided below, and the parent or parents have no standing to appear in any legal proceeding concerning the child, with the exception of an appeal.

**81.2.12.12 ENROLLMENT AND INHERITANCE STATUS.** No 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. The Termination Order severs all legal relationships between the parent and child, including the rights of intestate distribution and succession, custody, control and financial responsibility.

1. If a youth is not enrolled but is eligible for membership in an Indian tribe, beda?chelh shall assist in making application for membership or enrollment of the youth prior to entry of the final order terminating parental rights.

2. If an objection to enrollment is filed, the court shall set the matter for hearing, notify the interested parties, and make a determination based on the best interests of the youth.

**81.2.12.13 CHILD'S RELATIONSHIP WITH EXTENDED FAMILY.** A child's relationship with extended family members shall be as allowed by the adoptive parents, or as ordered by the Court if such relationship is determined to be in the best interests of the child.

**81.2.12.14 DISPOSITION.** After the entry of an Order Terminating Parental Rights, the Court may:

1. Place the child in the permanent legal custody of a relative for adoptive placement; and
2. Place the child in the physical custody of the adoptive parents
3. Grant custody to the remaining parent whose parental rights have not been terminated; or
4. Place the child in a temporary physical custody placement pending transfer to the adoptive resource.

**81.2.12.15 FINAL ORDER.** An Order Terminating Parental Rights shall be a final order for purposes of appeal. Aggrieved parties may appeal the termination in accordance with Tulalip Tribal Code.

**81.2.12.16 DENIAL OF PETITION TO TERMINATE PARENTAL RIGHTS.** Upon denying a petition to terminate parental rights, the Tribal Court shall state in writing the reasons for denying the petition and designate custody of the youth.

### **81.3 RELINQUISHMENT OF PARENTAL RIGHTS**

**81.3.1 COURT AUTHORITY.** The Court may accept a relinquishment of parental rights when the parent desires to voluntarily give such relinquishment.

#### **81.3.1.1 PROCEDURES FOR RELINQUISHMENT OF PARENTAL RIGHTS.**

1. Release and Surrender: A Release and Surrender of parental rights must be knowing and voluntary, and must be signed before the Judge of the Court.
2. Hearing: A hearing will be set for the purpose of accepting a Release and Surrender within sixty (60) **calendar** days of being notified of the parent's intent to relinquish his/her parental rights.

**81.3.1.2 EFFECT OF RELINQUISHMENT.** The parent's rights to the child are permanently relinquished and the parent has no standing to appear in any legal proceeding concerning the child, with the exception of a motion for revocation or an appeal.

**81.3.1.3 REVOCATION OF RELINQUISHMENT.** The parent's Release and Surrender may be withdrawn for any reason at any time prior to the entry of a Decree of Adoption. After the entry of a Decree of Adoption, the parent may revoke the Release and Surrender upon a showing that it was obtained through fraud, duress, or coercion, and may petition the Court to vacate the Decree of Adoption. No adoption which has been effective for at least two (2) years may be invalidated under the provisions of this section.

**81.3.1.4 ENROLLMENT AND INHERITANCE STATUS.** No relinquishment of parental rights shall affect a child's enrollment status as a member of the Tribe, or a child's degree of blood quantum. The Termination Order severs all legal relationships between the parent and child, including the rights of intestate distribution and succession, custody, control and financial responsibility.

**81.3.1.5 FINAL ORDER.** An Order Accepting Release and Surrender shall be a final order for purposes

of appeal. Aggrieved parties may appeal the termination in accordance with Tulalip Tribal Code.

### **81.3.2 YOUTH-IN-NEED-OF-CARE -ADOPTION**

**81.3.2.1 POLICY.** It shall be the policy of the Tribe to prefer guardianship over adoption as a placement option for a Youth-in-Need-of-Care, where the permanent plan is not inconsistent with other provisions of this Ordinance.

**81.3.2.2 PURPOSE.** It is the purpose of this code to provide a means by which Indian youths may be adopted by persons who are willing and able to provide parental care and support as well as maintain the youth's tribal identity and cultural traditions.

**81.3.2.3 WHO MAY BE ADOPTED.** The following children may be adopted under this section of the Ordinance:

- A. A child who has been adjudicated as a Youth-in-Need-of-Care,
- B. A child who is subject to the jurisdiction of the Court,
- C. A child whose parents' parental rights have been terminated or relinquished, and
- D. A child Who has been committed to the permanent custody of beda?chelh for adoptive placement.

#### **81.3.2.4 PROCEDURES FOR OBTAINING AN ADOPTION.**

**A. Filing of Petition:**

- 1. Who May File for Adoption: Any adult, twenty-one (21) years of age or older may file a Petition for Adoption.
- 2. Contents of the Petition: A Petition for Adoption shall be verified under oath by the Petitioner(s) and shall contain the following information:
  - a. The full name, residence, date and place of birth, and sex of the child, with attached documentary proof of the date and place of the birth of the child;
  - b. The names of the persons with whom the child has lived, the residences at which the child has lived, for the previous year, and the length of time the child has lived with each person and at each residence;
  - c. The names and residences of the child's legal parents, guardians, or custodians. In addition, the names and residences of putative fathers or step-parents, if any;
  - d. Documentary proof of the child's membership status in the Tribe;
  - e. The full name, residence, date and place of birth, occupation of the Petitioner(s), statement of relationship to the child, and proof of Tribal membership descendency, if applicable;
  - f. A statement by Petitioner(s) of the desire that a parent-child relationship be established between Petitioner(s) and the child;
  - g. An agreement to maintain ties with the Tribe, and, if appropriate, with extended family members; and
  - h. A citation to the specific section of this Ordinance giving the Court jurisdiction over the proceedings.

#### **81.3.2.5 SERVICE OF THE PETITION FOR ADOPTION.**

- A. The Petition for Adoption shall be personally served on:
  - 1. The child's parent, current guardian, or custodian;
  - 2. The child who is the subject of the petition for adoption if he or she is fourteen (14) years of age or older;
  - 3. The child's biological parent, guardian, or custodian;
- B. The Petition for Adoption shall be served via first class and certified mail, return receipt requested on:
  - 1. Tulalip Family Services;

2. beda?chelh Presenting Officer;
  3. Any person the parties or the Court deem necessary for proper adjudication; and
  4. If the child is not enrolled in The Tulalip Tribes, any tribe the child is enrolled in or is eligible for enrollment.
- C.** If any party who is required to be personally served is outside the Tribes' service area, service shall be by certified mail, return receipt requested, or by any other means reasonably designed to give notice.
- D.** If any party's current address is unknown, the Petition shall be published in a regularly published newspaper of the last known area the party resided in.
- E.** Service shall be made by any person over the age of eighteen (18) who is not a party to the proceedings.

**81.3.2.6 BEDA?CHELH INVESTIGATIVE REPORT.** Upon receipt of a Petition for Adoption, beda?chelh shall investigate any potential adoptive parent, and shall prepare and submit a written report to the Court within sixty (60) *calendar* days of the hearing.

- A.** The report shall address the suitability and character of the Petitioner(s), including, but not limited to, the financial, physical, and general background of the Petitioner and his/her home.
- B.** The report shall reflect contact with appropriate agencies and individuals who have relevant knowledge and information.
- C.** The report shall contain beda?chelh's recommendation regarding the adoption, and whether the Program believes that the adoption will be in the best interests of the child.
- D.** The Court Clerk shall provide copies of the report to all parties at least twenty (20) *calendar* days prior to the hearing.

**81.3.2.7 OTHER AGENCIES; INDIVIDUALS.** The Court may order other 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. The Court Clerk shall provide copies of the report to all parties at least twenty (20) *calendar* days prior to the hearing.

**81.3.2.8 ENROLLMENT PRIOR TO ADOPTION.**

- A.** If a youth is not enrolled but is eligible for membership in an Indian Tribe, beda?chelh shall assist in making application for membership or enrollment of the youth prior to adoption.
- B.** If an objection to enrollment is filed, the Court shall set the matter for hearing, notify the interested parties, and make a determination based on the best interests of the youth.
- C.** In no event shall the enrollment process be allowed to impede the adoption process. Enrollment prior to adoption is preferred, but the adoption shall proceed regardless of enrollment status.

**81.3.2.9 PRE-ADOPTIVE COUNSELING.**

- A.** Pre-adoptive counseling shall be required for:
  1. The parent or parents voluntarily consenting to adoption of a youth; and
  2. The petitioner.
  3. Tulalip Family Service or a provider approved by the Tribes' shall provide any required pre-adoptive counseling. Such counseling shall cover the following issues when appropriate:
    - a. The special needs of the youth;
    - b. The duties and responsibilities of the petitioner in adopting the youth;
    - c. Any conditions placed by the biological parent on the petitioner in regard to the youth; and
    - d. the results of voluntarily terminating parental rights.
  4. A report on all pre-adoptive counseling completed shall be submitted to the Court by Tulalip Family Services.

**81.3.2.10 HEARING.**

**A. Time Limit:** A hearing shall be commenced within ninety (90) *calendar* days of the filing of a Petition for Adoption, except when extended by Court order, to determine if it is in the child's best interests to be adopted by Petitioner(s).

**B. Representation by Professional or Lay Counsel:** Parties involved in an adoption proceeding before the Tulalip Tribal Court shall have the right to be represented by counsel or a spokesperson as provided by Tulalip Tribal Ordinance.

**81.3.2.11 NOTICE OF HEARING.**

**A.** The Court shall issue notice of the hearing at least twenty (20) *calendar* days before the hearing is scheduled to take place.

**B.** The notice of the hearing shall include the date, time and place of the hearing and a copy of the petition for adoption.

**C.** A statement to the effect that an adoption of the child is proposed and that if the parent or parents fail to appear at the time and place specified in the summons, the Court may approve or deny the adoption and take any other action that is authorized by law.

**81.3.2.12 SERVICE OF NOTICE OF HEARING.**

**A.** Notice shall be served via first class and certified mail, return receipt requested on:

1. The petitioner;
2. The youth who is the subject of the petition;
3. The youth's biological parent, guardian, or custodian;
4. beda?chelh;
5. Any person the parties or the Court find necessary to include at the hearing; and
6. If the youth is not enrolled in the Tulalip Tribes, any tribe the child is enrolled in or is eligible for enrollment.
7. If any party who is required to be personally served is outside the Tribes' service area, service shall be by certified mail, return receipt requested, or by any other means reasonably designed to give notice.

**B.** If a party's current address is unknown, the notice shall be published in a regularly published newspaper of the last known area the party resided in.

**C.** Service shall be made by any person over the age of eighteen who is not a party to the proceedings.

**81.3.2.13 PROCEDURE AT HEARING.**

**A.** Petitioner(s) and beda?chelh shall appear personally at the hearing.

**B.** The adoption hearing shall be private and closed. Only those persons whom the Court finds have a legitimate purpose to be present may attend.

**C.** The Court shall consider all adoption reports submitted for review.

**D.** All parties shall be given an opportunity to testify at the adoption hearing.

**81.3.2.14 JUDICIAL INQUIRY.** The Court shall inquire of all persons appearing as to whether the best interests of the child will be promoted by the adoption.

**81.3.2.15 EFFECTIVE DATE OF DECREE OF ADOPTION.** The Court shall enter a Decree of Adoption as follows:

**A.** In the case of a child who has lived with the Petitioner(s) for more than one year before the Petition for Adoption was filed, a Decree of Adoption shall be entered immediately; and

**B.** In all other cases, the Court shall enter an order placing the child in the physical custody of the Petitioner(s) for a period of time, not to exceed one (1) year; at the conclusion of that period of time, beda?chelh shall submit a supplemental report and, if the Court determines that the best interests of the child are served, a Decree of Adoption shall be entered immediately.

**81.3.2.16. CONTENTS OF DECREE OF ADOPTION.** The Decree of Adoption shall include:

- A. Such facts necessary to establish by clear and convincing evidence that it is in the best interests of the child and that the child is eligible and suitable for adoption, and that the adoptive parent(s) are capable of providing the proper care of the child;
- B. A Provision for Tribal contacts, and extended family contacts, if appropriate; and
- C. Where the adoption includes a signed agreement between the adoptive parent(s) and the biological parent(s), the Court shall incorporate the agreement into the Decree of Adoption, and shall enter an order compelling compliance with the agreement and providing judicial review in the event of noncompliance.

**81.3.2.17 ORDER OF PREFERENCE FOR ADOPTION.** When consistent with the best interests of the child, preference in adoption shall be given in the following order:

- A. A person who was indicated by the wishes of a deceased parent as indicated in a will or similar written instrument;
- B. Family members;
- C. Extended family members;
- D. A member of the Tulalip Tribes living on or near the Tulalip Reservation;
- E. A member of another Indian tribe residing on or near the Tulalip Reservation;
- F. A member of the Tulalip Tribes residing off the Tulalip Reservation;
- G. A member of another Indian tribe residing off the Tulalip Reservation;
- H. If the order of preference listed above cannot be met, adoption may be allowed by any person who has a knowledge of and a desire to foster the youth's tribal affiliation and cultural needs.
- I. In the Court's discretion, the placement preference of the youth, his or her biological parents, guardian or other custodian may be considered but may not be the controlling factor in determining placement.
- J. Only in exceptional circumstances and for good cause shown may a non-Indian person adopt an Indian youth.
- K. Placement of a youth through adoption shall be governed by the best interests of that youth.
- L. If more than one sibling is being adopted, preference shall be given to a qualified person who can adopt all siblings.

**81.3.2.18 CONSENT TO ADOPTION.** Absent contrary Court order, the child's consent to the adoption and the consent of any child over the age of twelve (12) shall be necessary under this section. Consent shall be submitted prior to the adoption proceeding. A consent obtained from a child must be knowing and voluntary and signed before the Court.

**81.3.2.19 CHILD'S REVOCATION OF CONSENT.** Any child over the age of twelve (12) may withdraw consent for any reason at any time prior to the entry of a Decree of Adoption. After the entry of a Decree of Adoption, the child may withdraw consent upon a showing that consent was obtained through fraud, duress, or coercion, and may petition the Court to vacate the Decree of Adoption. No adoption which has been effective for at least two (2) years may be invalidated under this section.

**81.3.2.20 ADOPTION RECORDS.** All records, reports, proceedings and orders are confidential, permanent records of the Court, and shall be sealed, and shall not be available for release for inspection by the public, except by Order of the Court with good cause shown.

**81.3.2.21 ADOPTIVE BIRTH CERTIFICATE.** Within five (5) *calendar* days of the Decree of Adoption entered by the Court, the Division of Vital Statistics of the State Board of Health of the State which issued the original certificate of birth shall be notified by the Clerk of Court that the adoption has taken place, giving the full name, sex, date and place of birth, and names of biological parents, in order that a new record of birth in the child's new name and with the name or names of the adoptive parent(s) may be recorded; said Division shall be provided with a certified copy of the Decree of Adoption.

**81.3.2.22 NAME OF ADOPTED CHILD.** A child adopted by order of the Court shall assume the surname of the person(s) by whom s/he is adopted, if requested by the adoptive parents and the child (if over the age of 12) consents.

**81.3.2.23 RIGHTS OF ADOPTED CHILD.** A child adopted by order of the Court shall be entitled to the same rights as a biological child of the adoptive parent(s).

**81.3.2.24 FINAL ORDER.** A Decree of Adoption shall be considered a final order for the purposes of appeal.

**81.3.2.25 DENIAL OF PETITION FOR ADOPTION.**

**A.** Upon denying a petition for adoption, the Court shall state in writing the reasons for denying the petition and designate custody of the youth.

**81.3.3 ALL YOUTH – LEGAL GUARDIANSHIP; ADOPTION; EMANCIPATION**

**81.3.3.1 ALL YOUTH – LEGAL GUARDIANSHIP.**

**A. Policy.** It shall be the policy of the Tribe to prefer guardianship over adoption. It shall further be the policy of the Tribe to prefer guardianships that maintain and preserve the child's connection to the Tribe and child's family.

**B. Purpose.** The purpose of this code is to give a person who is not a child's parent, certain powers and duties to act for the benefit of and in the best interest of a youth.

**81.3.3.2 PREFERENCE FOR APPOINTMENT OF GUARDIAN.**

**A.** The order of preference for appointing a guardian, in the absence of good cause to the contrary, shall be:

1. A person who was indicated by the wishes of a deceased parent as indicated in a will or similar instrument;
2. Family members;
3. Extended family members;
4. A member of the Tulalip Tribes living on or near the Tulalip Reservation;
5. A member of another Indian tribe residing on or near the Tulalip Reservation;
6. A member of the Tulalip Tribes residing off the Tulalip Reservation; or
7. A member of another Indian tribe residing off the Tulalip Reservation.

**B.** If the order of preference cannot be met, placement shall be with any person who has a knowledge of and desire to foster the youth's tribal affiliation and cultural needs.

**C.** In the Court's discretion, the placement preference of the youth, his or her parents, guardian, or other custodian may be considered but may not be the controlling factor in determining placement;

**D.** Only in exceptional circumstances and for good cause shown may a non-Indian guardian or non-Indian facility be appointed guardian.

**E.** The appointment of a guardian shall be governed by the best interests of the youth who is the subject of the guardianship.

**F.** If more than one sibling is having a guardian appointed, preference shall be given to a qualified person or facility that can serve as guardian for all siblings.

**81.3.3.3 YOUTH'S PREFERENCE FOR GUARDIAN.** When the youth who is the subject of the petition for guardianship is fourteen (14) years of age or older, the Court shall consider his or her preference in appointing a guardian.

**81.3.3.4 PROCEDURES FOR FILING PETITION FOR LEGAL GUARDIANSHIP.**

**A. Filing of Petition:**

1. Who May File Petition for Legal Guardianship: Any person petitioning for legal guardianship must be an adult.
2. Contents of the Petition: A Petition for Legal Guardianship shall be verified under oath by Petitioner(s) and shall contain the following information:
  - a. The full name, residence, date and place of birth, sex of the child, with attached documentary proof of the date and place of the birth of the child;
  - b. The names of the persons with whom the child has lived, the residences at which the child has lived, for the previous year, and the length of time the child has lived with each person and at each residence;
  - c. The names and residences of the child's legal parents, guardians, or custodians. In addition, the names and residences of putative fathers or stepparents, if any;
  - d. Documentary proof of the child's membership status in the Tribe;
  - e. The full name, residence, date and place of birth, occupation of the Petitioner(s), statement of relationship to the child, proof of tribal membership descendancy, if applicable;
  - f. A statement by Petitioner(s) of the desire that a relationship of legal guardian and child be established between Petitioner(s) and the child;
  - g. An agreement to maintain ties with the Tribe and where appropriate with extended family members; and
  - h. A citation to the specific section of this Ordinance giving the Court jurisdiction of the proceedings.
3. Service of The Petition for Guardianship.
  - a. Service of the Petition for Guardianship shall be personally served on:
    - i. The child's parent, current guardian, or custodian;
    - ii. The child who is the subject of the petition for guardianship if he or she is twelve (12) years of age or older;
  - b. Notice shall be served via first class and certified mail, return receipt requested on:
    - i. Tulalip Family Services;
    - ii. beda?chelh Presenting Officer;
    - iii. Any person the parties or the Court deem necessary for proper adjudication; and
    - iv. If the child is not enrolled in The Tulalip Tribes, any tribe the child is enrolled in or is eligible for enrollment.
4. If any party who is required to be personally served is outside the Tribes' service area, service shall be by certified mail, return receipt requested, or by any other means reasonably designed to give notice.
5. If any party's current address is unknown, the Petition shall be published in a regularly published newspaper of the last known area the party resided in.
6. Service shall be made by any person over the age of eighteen (18) who is not a party to the proceedings.

**81.3.3.5 NOTICE OF HEARING.**

- A.** The Court clerk shall issue notice of the Hearing for Guardianship at least twenty (20) *calendar* days before the hearing is scheduled to take place. Notice shall include:
1. The date, time, and place of the hearing and a copy of the Petition for Guardianship; and
  2. A statement to the effect that the rights of the parent or parents may be affected, that certain persons are proposed to be appointed as legal guardians in the proceedings, and that if the parent or parents fail to appear at the time and place specified in the summons, the Court may appoint those persons as legal guardians and take any other action that is authorized by law.
- B.** Notice shall be served via first class and certified mail, return receipt requested on:
1. The Petitioner;
  2. The child who is the subject of the petition;
  3. The child's parent, current guardian, or custodian;
  4. beda?chelh;
  5. Any person the parties or the Court deem necessary for proper adjudication; and
  6. If the child is not enrolled in The Tulalip Tribes, any tribe the child is enrolled in or is eligible for enrollment.
- C.** If any party who is required to be personally served is outside the Tribes' service area, service shall be by certified mail, return receipt requested, or by any other means reasonably designed to give notice.
- D.** If any party's current address is unknown, the notice shall be published in a regularly published newspaper of the last known area the party resided in.
- E.** Service shall be made by any person over the age of eighteen (18) who is not a party to the proceedings.

**81.3.3.6 BEDA?CHELH GUARDIANSHIP REPORT.** Upon receipt of a Petition for Legal Guardianship, beda?chelh shall investigate any party to be appointed as a legal guardian, conduct a complete home study, and shall prepare and submit a written report to the Court and serve it by certified mail on all parties no later than twenty (20) *calendar* days before the Guardianship Hearing.

- A.** The report shall address the suitability and character of the legal guardian, including, but not limited to, the financial, physical, and general background of the legal guardian and his/her home.
- B.** The report shall reflect contact with all appropriate agencies and individuals who have relevant knowledge and information.
- C.** The report shall contain beda?chelh's recommendation regarding the legal guardianship, and whether beda?chelh believes that such legal guardianship will be in the best interests of the child.
- D.** A copy of the report shall be served on Petitioner at the same time it is presented to the Court.

**81.3.3.7 OTHER AGENCIES / INDIVIDUALS.** The Court may order other 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 legal guardianship. A copy of all reports shall be served on Petitioner at the same time they are presented to the Court.

**81.3.3.8 HEARING.**

- A. Purpose / Time Limit:** A hearing shall be commenced within ninety (90) *calendar* days of filing of a Petition for Legal Guardianship, except when extended by Court order, to determine if it is in the child's best interests to be appointed a legal guardian.
- B. Procedure at Hearing:** Petitioner(s) and beda?chelh shall appear personally at the hearing.
- C. Judicial Inquiry:** The Court shall inquire of all persons appearing as to whether the best

interests of the child will be promoted by the legal guardianship.

**81.3.3.9 TERM RIGHTS AND DUTIES OF LEGAL GUARDIAN.** A legal guardian appointed by the Court shall have the custody of; and be responsible for all care of, the child and the care and management of his/her property until the child reaches the age of eighteen (18), marries, is emancipated by the Court, or until the legal guardian is legally discharged, or wardship over the child is terminated, or custody is transferred back to beda?chelh; provided, however, that the legal guardian shall not have the authority, without express written consent of the Court, to dispose of any real property or Tribal member benefits of the child in any manner. The legal guardian shall also have the authority to consent to the medical care and treatment of the child, and to otherwise have those rights of a parent of the child. The legal guardian shall be responsible for reporting to the Court on a yearly basis, or more often, as required by the Court.

**81.3.3.10 DETERMINATION BY THE COURT.** At the conclusion of the Guardianship Hearing, the Court shall make written findings as to whether there is clear and convincing evidence that the guardianship is in the best interests of the child.

**81.3.3.11 FINAL ORDER.** An Order Establishing Legal Guardianship shall be a considered a final order for the purposes of appeal.

#### **81.3.4 ALL YOUTH – RELINQUISHMENT OF PARENTAL RIGHTS**

**81.3.4.1 COURT AUTHORITY.** The Court may accept a relinquishment of parental rights when the parent desires to voluntarily give such relinquishment.

**A. Procedures for Relinquishment of Parental Rights:**

1. Release and Surrender: A Release and Surrender of parental rights must be knowing and voluntary, and must be signed before the Judge of the Court.
2. Hearing: A hearing will be set for the purpose of accepting a Release and Surrender within sixty (60) *calendar* days of being notified of the parent’s intent to relinquish his/her parental rights.
3. Effect of Relinquishment: The parent’s rights to the child are permanently relinquished and the parent has no standing to appear in any legal proceeding concerning the child, with the exception of a motion for revocation or an appeal.
4. Revocation of Relinquishment: The parent’s Release and Surrender may be withdrawn for any reason at any time prior to the entry of a Decree of Adoption. After the entry of a Decree of Adoption, the parent may revoke the Release and Surrender upon a showing that it was obtained through fraud, duress, or coercion, and may petition the Court to vacate the Decree of Adoption. No adoption which has been effective for at least two (2) years may be invalidated under the provisions of this section.
5. Enrollment and Inheritance Status: No relinquishment of parental rights shall affect a child’s enrollment status as a member of the Tribe, or a child’s degree of blood quantum. The Termination Order severs all legal relationships between the parent and child, including the rights of intestate distribution and succession, custody, control and financial responsibility.
6. Final Order: An Order Accepting Release and Surrender shall be a final order for purposes of appeal. Aggrieved parties may appeal the termination in accordance with Tulalip Tribal Code.

#### **81.3.5 ALL YOUTH - ADOPTION**

**81.3.5.1 POLICY.** It shall be the policy of the Tribes to prefer guardianships over adoption.

**81.3.5.2 PURPOSE.** It is the purpose of this code to provide a means by which Indian youths may be adopted by persons who are willing and able to provide parental care and support as well as maintain the

youth's tribal identity and cultural traditions.

**81.3.5.3 MAY BE ADOPTED.** The following children may be adopted under this section of the Ordinance:

- A. A child who is subject to the jurisdiction of the Court; and
- B. Whose parents' parental rights have been terminated or relinquished.

**81.3.5.4 PROCEDURES FOR OBTAINING AN ADOPTION.**

**A. Filing of Petition:**

1. Who May File for Adoption: Any adult, twenty-one (21) years of age or older may file a Petition for Adoption.
2. Contents of the Petition: A Petition for Adoption shall be verified under oath by the Petitioner(s) and shall contain the following information:
  - a. The full name, residence, date and place of birth, and sex of the child, with attached documentary proof of the date and place of the birth of the child;
  - b. The names of the persons with whom the child has lived, the residences at which the child has lived, for the previous year, and the length of time the child has lived with each person and at each residence;
  - c. The names and residences of the child's legal parents, guardians, or custodians. In addition, the names and residences of putative fathers or step-parents, if any;
  - d. Documentary proof of the child's membership status in the Tribe;
  - e. The full name, residence, date and place of birth, occupation of the Petitioner(s), statement of relationship to the child, and proof of Tribal membership descendency, if applicable;
  - f. A statement by Petitioner(s) of the desire that a parent-child relationship be established between Petitioner(s) and the child;
  - g. An agreement to maintain ties with the Tribe, and, if appropriate, with extended family members; and
  - h. A citation to the specific section of this Ordinance giving the Court jurisdiction over the proceedings.

**B. Service of The Petition for Adoption.**

1. The Petition for Adoption shall be personally served on:
  - a. The child's parent, current guardian, or custodian;
  - b. The child who is the subject of the petition for adoption if he or she is fourteen (14) years of age or older;
  - c. The child's biological parent, guardian, or custodian;
2. The Petition for Adoption shall be served via first class and certified mail, return receipt requested on:
  - a. Tulalip Family Services;
  - b. Any person the parties or the Court deem necessary for proper adjudication; and
  - c. If the child is not enrolled in The Tulalip Tribes, any tribe the child is enrolled in or is eligible for enrollment.
3. If any party who is required to be personally served is outside the Tribes' service area, service shall be by certified mail, return receipt requested, or by any other means reasonably designed to give notice.
4. If any party's current address is unknown, the Petition shall be published in a regularly published newspaper of the last known area the party resided in.
5. Service shall be made by any person over the age of eighteen (18) who is not a party to the proceedings.

**C. beda?chelh Investigative Report:** Upon receipt of a Petition for Adoption, the Court shall forward a copy of the Petition to beda?chelh. beda?chelh shall investigate any potential adoptive parent, and shall prepare and submit a written report to the Court within sixty (60) *calendar* days of the hearing.

1. The report shall address the suitability and character of the Petitioner(s), including, but not limited to, the financial, physical, and general background of the Petitioner and his/her home.

2. The report shall reflect contact with appropriate agencies and individuals who have relevant knowledge and information.

3. The report shall contain beda?chelh's recommendation regarding the adoption, and whether the Program believes that the adoption will be in the best interests of the child.

4. The Court Clerk shall provide copies of the report to all parties at least twenty (20) *calendar* days prior to the hearing.

**81.3.5.5 OTHER AGENCIES; INDIVIDUALS.** The Court may order other 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. The Court Clerk shall provide copies of the report to all parties at least twenty (20) *calendar* days prior to the hearing.

**81.3.5.6 ENROLLMENT PRIOR TO ADOPTION.**

**A.** If a youth is not enrolled but is eligible for membership in an Indian Tribe, beda?chelh shall assist in making application for membership or enrollment of the youth prior to adoption.

**B.** If an objection to enrollment is filed, the Court shall set the matter for hearing, notify the interested parties, and make a determination based on the best interests of the youth.

**C.** In no event shall the enrollment process be allowed to impede the adoption process. Enrollment prior to adoption is preferred, but the adoption shall proceed regardless of enrollment status.

**81.3.5.7 PRE-ADOPTIVE COUNSELING.**

**A.** Pre-adoptive counseling shall be required for:

**B.** The parent or parents voluntarily consenting to adoption of a youth; and

**C.** The petitioner.

**D.** Tulalip Family Service or a provider approved by the Tribes' shall provide any required pre-adoptive counseling. Such counseling shall cover the following issues when appropriate:

1. The special needs of the youth;

2. The duties and responsibilities of the petitioner in adopting the youth;

3. Any conditions placed by the biological parent on the petitioner in regard to the youth; and

4. the results of voluntarily terminating parental rights.

**E.** A report on all pre-adoptive counseling completed shall be submitted to the Court by Tulalip Family Services.

**81.3.5.8 HEARING.**

**A. Time Limit:** A hearing shall be commenced within ninety (90) days of the filing of a Petition for Adoption, except when extended by Court order, to determine if it is in the child's best interests to be adopted by Petitioner(s).

**B. Representation by Professional or Lay Counsel:** Parties involved in an adoption proceeding before the Tulalip Tribal Court shall have the right to be represented by counsel or a spokesperson as provided by Tulalip Tribal Ordinance.

**81.3.5.9 NOTICE OF HEARING.**

**A.** The Court shall issue notice of the hearing at least twenty (20) *calendar* days before the hearing is scheduled to take place.

**B.** The notice of the hearing shall include the date, time and place of the hearing and a copy of the petition for adoption.

C. A statement to the effect that an adoption of the child is proposed and that if the parent or parents fail to appear at the time and place specified in the summons, the Court may approve or deny the adoption and take any other action that is authorized by law.

**81.3.5.10 SERVICE OF NOTICE OF HEARING.**

- A. Notice shall be served via first class and certified mail, return receipt requested on:
- B. The petitioner;
- C. The youth who is the subject of the petition;
- D. The youth's biological parent, guardian, or custodian;
- E. beda?chelh;
- F. Any person the parties or the Court find necessary to include at the hearing; and
- G. If the youth is not enrolled in the Tulalip Tribes, any tribe the child is enrolled in or is eligible for enrollment.
- H. Any party who is required to be personally served is outside the Tribes' service area, service shall be by certified mail, return receipt requested, or by any other means reasonably designed to give notice.
- I. If a party's current address is unknown, the notice shall be published in a regularly published newspaper of the last known area the party resided in.
- J. Service shall be made by any person over the age of eighteen who is not a party to the proceedings.

**81.3.5.11 PROCEDURE AT HEARING.**

- A. Petitioner(s) and beda?chelh shall appear personally at the hearing.
- B. The adoption hearing shall be private and closed. Only those persons whom the Court finds have a legitimate purpose to be present may attend.
- C. The Court shall consider all adoption reports submitted for review.
- D. All parties shall be given an opportunity to testify at the adoption hearing.

**81.3.5.12 JUDICIAL INQUIRY.** The Court shall inquire of all persons appearing as to whether the best interests of the child will be promoted by the adoption.

**81.3.5.13 EFFECTIVE DATE OF DECREE OF ADOPTION.** The Court shall enter a Decree of Adoption as follows:

- A. In the case of a child who has lived with the Petitioner(s) for more than one year before the Petition for Adoption was filed, a Decree of Adoption shall be entered immediately; and
- B. In all other cases, the Court shall enter an order placing the child in the physical custody of the Petitioner(s) for a period of time, not to exceed one (1) year; at the conclusion of that period of time, beda?chelh shall submit a supplemental report and, if the Court determines that the best interests of the child are served, a Decree of Adoption shall be entered immediately.

**81.3.5.14 CONTENTS OF DECREE OF ADOPTION.** The Decree of Adoption shall include:

- A. Such facts necessary to establish by clear and convincing evidence that it is in the best interests of the child and that the child is eligible and suitable for adoption, and that the adoptive parent(s) are capable of providing the proper care of the child;
- B. A Provision for Tribal contacts, and extended family contacts, if appropriate; and
- C. Where the adoption includes a signed agreement between the adoptive parent(s) and the biological parent(s), the Court shall incorporate the agreement into the Decree of Adoption, and shall enter an order compelling compliance with the agreement and providing judicial review in the event of noncompliance.

**81.3.5.15 ORDER OF PREFERENCE FOR ADOPTION.**

- A. When consistent with the best interests of the child, preference in adoption shall be given in the following order:
- B. A person who was indicated by the wishes of a deceased parent as indicated in a will or similar

written instrument;

- C. Family members;
- D. Extended family members;
- E. A member of the Tulalip Tribes living on or near the Tulalip Reservation;
- F. A member of another Indian tribe residing on or near the Tulalip Reservation;
- G. A member of the Tulalip Tribes residing off the Tulalip Reservation;
- H. A member of another Indian tribe residing off the Tulalip Reservation;
- I. If the order of preference listed above cannot be met, adoption may be allowed by any person who has a knowledge of and a desire to foster the youth's tribal affiliation and cultural needs.
- J. In the Court's discretion, the placement preference of the youth, his or her biological parents, guardian or other custodian may be considered but may not be the controlling factor in determining placement.
- K. Only in exceptional circumstances and for good cause shown may a non-Indian person adopt an Indian youth.
- L. Placement of a youth through adoption shall be governed by the best interests of that youth.
- M. If more than one sibling is being adopted, preference shall be given to a qualified person who can adopt all siblings.

**81.3.5.16 CONSENT TO ADOPTION.** Absent contrary Court order, bedachelh's consent to the adoption and the consent of any child over the age of twelve (12) shall be necessary under this section. Consent shall be submitted prior to the adoption proceeding. A consent obtained from a child must be knowing and voluntary and signed before the Court.

**81.3.5.17 CHILD'S REVOCATION OF CONSENT.** Any child over the age of twelve (12) may withdraw consent for any reason at any time prior to the entry of a Decree of Adoption. After the entry of a Decree of Adoption, the child may withdraw consent upon a showing that consent was obtained through fraud, duress, or coercion, and may petition the Court to vacate the Decree of Adoption. No adoption which has been effective for at least two (2) years may be invalidated under this section.

**81.3.5.18 ADOPTION RECORDS.** All records, reports, proceedings and orders are confidential, permanent records of the Court, and shall be sealed, and shall not be available for release for inspection by the public, except by Order of the Court with good cause shown.

**81.3.5.19 ADOPTIVE BIRTH CERTIFICATE.** Within five (5) *calendar* days of the Decree of Adoption entered by the Court, the Division of Vital Statistics of the State Board of Health of the State which issued the original certificate of birth shall be notified by the Clerk of Court that the adoption has taken place, giving the full name, sex, date and place of birth, and names of biological parents, in order that a new record of birth in the child's new name and with the name or names of the adoptive parent(s) may be recorded; said Division shall be provided with a certified copy of the Decree of Adoption.

**81.3.5.20 NAME OF ADOPTED CHILD.** A child adopted by order of the Court shall assume the surname of the person(s) by whom s/he is adopted, if requested by the adoptive parents and the child (if over the age of 12) consents.

**81.3.5.21 RIGHTS OF ADOPTED CHILD.** A child adopted by order of the Court shall be entitled to the same rights as a biological child of the adoptive parent(s).

**81.3.5.22 FINAL ORDER.** A Decree of Adoption shall be considered a final order for the purposes of appeal.

**81.3.5.23 DENIAL OF PETITION FOR ADOPTION.**

A. Upon denying a petition for adoption, the Court shall state in writing the reasons for denying the petition and designate custody of the youth.

### 81.3.6 ALL YOUTH - EMANCIPATION

**81.3.6.1 REQUIREMENTS.** The Court may declare a Tulalip child emancipated either pursuant to a petition or as a dispositional alternative if the child wishes to be free from parental control and protection and no longer needs that control and protection, or the child is a youth-in-need-of-care as defined by this Ordinance; and all of the following exist:

- A. The child is fifteen (15) years of age or older;
- B. Living separate from his or her parent(s), guardian, or custodian;
- C. Is self-supporting;
- D. Understands the consequences of being free from parental control and protection; and
- E. Has an acceptable plan for independent living.

#### 81.3.6.2 PROCEDURE FOR EMANCIPATION.

**A. Petition:**

- 1. Who may Petition:
  - a. A minor who is at least fifteen (15) years of age may petition the Court for a declaration of full or partial emancipation.
  - b. A youth's parent, guardian or custodian.
- 2. The petition shall be verified and shall state:
  - a. The name, date of birth and address of the youth who is the subject of the petition;
  - b. The name and address of each living parent of the youth who is the subject of the petition;
  - c. The name and address of the youth's guardian or custodian, if any;
  - d. The reasons why the emancipation would be in the best interests of the youth;
  - e. The purposes for which emancipation is sought; and
  - f. The name, address and relationship to the youth of the person filing the petition.

**B. Service of The Petition for Emancipation.**

- 1. Service of the Petition for Emancipation shall be personally served on:
  - a. The child's parent, current guardian, or custodian:
- 2. If any party who is required to be personally served is outside the Tribes' service area, service shall be by certified mail, return receipt requested, or by any other means reasonably designed to give notice.
- 3. If any party's current address is unknown, the Petition shall be published in a regularly published newspaper of the last known area the party resided in.
- 4. Service shall be made by any person over the age of eighteen (18) who is not a party to the proceedings.

**81.3.6.3 NOTICE OF HEARING.** Before the petition is heard, notice of Hearing on Petition for Emancipation shall be personally served at least ten (10) *calendar* days before the hearing on the minor's parent'(s), guardian or custodian.

**81.3.6.4 FINDINGS.** If the Court finds that the requirements of section 81.3.6.1 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 interests of the child.

**81.3.6.5 DECLARATION.** If the Court grants all or part of the petition, it shall immediately issue a declaration of emancipation.

**81.3.6.6 PURPOSE FOR EMANCIPATION.** An emancipated minor shall be considered an adult over

the age of eighteen (18) for all purposes. The emancipated minor shall remain subject to Tribal laws and rules governing the disbursement of Tribal monetary benefits.