

Title 3

NORTHWAY DOMESTIC RELATIONS CODE NORTHWAY TRIBAL GOVERNMENT

Northway, Alaska

**Adopted by the Northway Tribal Council
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CHAPTER 1
GENERAL PROVISIONS FOR DOMESTIC RELATIONS CODE

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Section 1. Purpose

The purpose of this Title is to provide policies and guidance for the Northway Tribal Government to take an active role in providing for the health, safety, and welfare of the Northway people and residents of Northway, to preserve and strengthen family ties whenever possible, to protect and preserve tribal heritage and cultural identity of the persons within the Tribe's jurisdiction, and to promote cooperation with the Tribe by other courts and agencies in fulfilling the purposes of these Codes. The intention of the Codes in this Title is to promote the health, safety, and welfare of the most valuable resource of the Tribe, the Northway people. The welfare of the children is of the foremost importance, and any decisions of the Northway Tribal Council and Court shall be based on the best interest of the children and future generations of the Tribe.

Section 2. Authority and Jurisdiction

The Northway Tribal Government regulates domestic relations matters under the authority of its inherent sovereign powers as a federally recognized Indian tribe, as

provided by the Constitution of the Northway Tribe, under written codes and unwritten traditional laws of the Tribe, and under any additional new powers so delegated or implied by the Federal Government or the State of Alaska. The Northway Tribal Court shall have the authority to hear and decide all matters in this Title where one or more of the Parties in a case are members or are eligible for membership in the Northway Tribe, or where the health, safety, or welfare of the tribal members, other Village residents, or the Village of Northway is affected.

- A. Exclusive Jurisdiction:** Once the Northway Tribal Court exercises its authority in any domestic relation case under this Title, the Northway Tribal Court has exclusive authority over all stages of the case as a matter of Tribal law until the case is dismissed or concluded, or until the Tribal Court gives authority to another government or another court by Tribal Court Order.
- B. Jurisdiction over Tribal Children:** The Northway Tribal Court shall have the authority to make decisions about child custody, adoption, and child protection if the children are members or are eligible for membership in the Northway Tribe. The Northway Tribal Court has the authority to hear and decide children’s cases involving tribal members or children eligible for tribal membership regardless of where the children reside. The Northway Tribe shall also have the authority to take temporary protective custody over any and all children in emergency circumstances, regardless of tribal membership, within the Village, until the matter can be transferred to the child’s tribe or to the State of Alaska for action.
- C. Jurisdiction over Children who are members or eligible for membership in more than one tribe:** It is the policy of the Northway Tribal Court that if a child is a member, or eligible for membership in more than one tribe, the Northway Tribal Court shall contact the other tribe and do one of the following:

1. Form a joint court for that child's case.
2. Allow the other tribe to be a Party to the case.
3. Allow the other tribe to be present in Northway Tribal Court hearings for that particular case.
4. Offer that the other tribe hear the case if the other tribe has an operating tribal court, has the most significant contacts, and if it is the best interest of the child for it to do so.

Section 3. Rights and Best Interest of the Child

Children have the absolute right to be raised in a safe, secure, nurturing and loving environment. Children have the right to be raised among their own people and by the standards of their own culture. In all cases involving children, the Northway Tribal Court shall hear all the facts and evidence brought before it and shall consider the rights of all Parties in the case, however, those of the child shall be most important. The best interest of the child shall be more important than the rights of any other person or entity.

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

1. The child's wishes if he or she is old enough and understands what the proceedings mean.
2. The love and affection existing between the involved adults and the child.
3. The needs of the child, including educational needs, physical and medical needs, emotional needs, mental needs, spiritual needs, cultural needs, and any other special or identified needs of the child.

4. The stability of the home environment likely to be offered by the involved adults.
5. Whether the involved adults are likely to encourage a loving relationship between the child and the other persons with whom the child has emotional ties.
6. Any evidence of violence determined by a criminal background history or by testimony of reliable sources, domestic violence, child abuse or child neglect in the involved adult's household(s).
7. Any evidence of substance abuse by the involved adults or someone living with them that would or does directly affect the emotional or physical well-being of the child.
8. The locations of persons to whom the child has emotional ties, whether the child is enrolled in school near one of those persons and the desirability of the child remaining at that school.
9. The advantages of keeping the child in the community where the child resides.
10. Any other considerations the Court feels are relevant to the best interest of the child.

Section 4. Child Placement Preferences

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

1. A member of the child's extended family who resides closest to or in the city or village in which the child resides.
2. A member of the child's extended family who resides elsewhere.
3. A member of the Northway Tribe.
4. A foster home, licensed, approved or specified by the Northway Tribe.
5. A member of another tribe with whom the child is culturally related.
6. A resident of Northway.

Section 5. Qualifications for Judges Hearing Childrens Cases

Judges in the Northway Tribal Court shall not hear children's cases in violation of the federal Indian Child Protection and Family Violence Prevention Act of 1990, without an express waiver by resolution of the Council in extraordinary circumstances explaining in great detail why a waiver should be granted and why it would be in the best interest of the Tribe. Without such waiver, no Judge shall

serve on a children's case if they have been found guilty or entered a plea of nolo contendere to any of the listed felony offenses, or any two or more of the listed misdemeanors.

Any felony on this list:

Murder in the first degree, unclassified felony
Murder in the second degree, unclassified felony
Manslaughter, Class A felony
Criminally negligent homicide, Class C felony
Assault in the first degree, Class A felony
Assault in the second degree, Class B felony
Assault in the third degree, Class C felony
Stalking in the first degree, Class C felony
Kidnapping, Unclassified felony
Sexual Assault in the first degree, unclassified felony
Sexual Assault in the second degree, Class B felony
Sexual Assault in the third degree, Class C felony
Sexual abuse of a minor in the first degree, unclassified felony
Sexual abuse of a minor in the second degree, Class B felony
Sexual abuse of a minor in the third degree, Class C felony
Incest, Class C felony
Unlawful exploitation of a minor, Class B felony
Robbery in the first degree, Class A felony
Robbery in the second degree, Class B felony
Extortion, Class B felony
Coercion, Class C felony

Any two misdemeanors on this list:

Assault in the fourth degree, Class A misdemeanor
Reckless endangerment, Class A misdemeanor
Stalking in the second degree, Class A misdemeanor
Custodial interference in the first degree, Class A misdemeanor
Sexual abuse of a minor in the third degree, Class A misdemeanor
Indecent exposure: before person under 16, Class A misdemeanor
Indecent exposure – before a person 16 or older, Class B misdemeanor

Section 6. Paternity Testing

When a Northway Tribal Court case involves a child whose father is not identified on the birth certificate, the Court may Order paternity testing for the biological, or alleged biological father of the child unless there is good cause not to establish paternity. 'Good cause' may include, but is not limited to cases involving domestic violence, incest, rape, or cases where the Court finds that identification of the father is not in the best interest of the child.

Section 7. Definitions

The following words and phrases, whenever used in this Title, shall have the following meanings:

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

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

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

"Child protection case" means a case where a child is found to be a "child in need of protection," as defined in Chapter 2, Section 2 of this Title.

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

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

"Domestic violence" Domestic violence means assault, threats of violence, or physical, sexual, or coercive controlling behavior to gain power and control over

another through the use of fear, threats, intimidation, coercion and/or physical violence when the victim is a spouse, a former spouse, an extended family member, a boyfriend or girlfriend, or any other person who has been an intimate partner, or a member of the social unit made up of those living together in the same dwelling or village as the victim.

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

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

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

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

"Guardian Ad Litem" means a person appointed by the Northway Tribal Court to look after the best interests of any child involved in a case under this Code. The Guardian Ad Litem may be the tribal child welfare worker. The guardian ad litem (GAL) shall be a full party in all cases. The guardian ad litem's job is to investigate facts in the case and advise the Court what actions the Court should take that would be in the child's best interest. The Court may adopt the advice of the GAL in whole or in part, or for good cause, may act or order action that is different than the advice of the GAL.

“Guardianship” means a legal relationship assigned by the tribal court whereby the guardian has the duty and responsibility to make legal, financial, health and education decisions for a minor child until they reach the age of 18 or finished high school, or for a person created when a person or institution is assigned by a court to take care of minor children or disabled adults.

"Involved agency" means an agency that is a party to the case due to the request of the Tribe or because of the jurisdiction of another government over the case. Examples of this might be the State of Alaska Office of Children’s Services, or the social services department of an Alaska Native non-profit corporation, another tribe or county in another state.

"Most significant contacts” means that the Northway Tribal Court shall consider the following factors when deciding if it is in the best interest of a child for another tribe that the child is a member of or eligible for membership in shall hear a case:

1. Length of time the child has lived in or near the Village of Northway.
2. The child's participation in the activities of the Northway Tribe.
3. The child's fluency in the Native language of Northway.
4. Whether there has been a previous case with respect to the child by the Northway Tribal Court.
5. The tribal membership of the child's custodial parent or other custodian.
6. The child's self-identification with the Northway Tribe.

7. Any other information relevant to the child's contacts with the Northway Tribe.

"Parent" means the biological parent of a child or any person who has lawfully adopted a child, whether in State or Tribal Court, or under tribal custom. It shall not mean the unwed father where the father has not admitted or acknowledged in writing or otherwise that he is the father, or where a Court Order establishing paternity has not been entered (i.e. "paternity" has not been established). It shall not mean any person as to whom the parent-child relationship has been lawfully terminated.

"Parties" means Petitioner(s) and Respondent(s) listed in the Petition to use the Tribal Court, the guardian ad litem and any other person or entity who is given the right by the Northway Tribal Court to be a Party to a case.

"Permanency placement" The most preferred option for permanency is the safe and permanent reunification of the child with its parents. When this is not possible, permanency placement means a placement in which a child is adopted, placed in long-term guardianship, or placed in a permanent foster care until they reach the age of majority or graduates from high school.

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

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

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Section 1. General Provisions for Child Protection Cases

- A. Best Interest of the Child:** In all child protection cases, the rights and best interest of the child shall be placed above all others. Guidelines for determining what is in the best interest of the child are in Chapter 1, Section 3 of this Title.

- B. Placement Preferences:** When it is necessary to place children outside the home of their biological parents in order to protect them, the Court shall follow the guidelines provided for placement preference in Chapter 1, Section 4 of this Title.

- C. Member or Eligible in More Than 1 Tribe:** If a child in need of protection is a member of, or eligible for membership in any other known tribes, the tribal court shall contact such tribes to notify them when a Petition to Use the Tribal Court is filed and decision to hear a case is made. The Court shall follow the guidelines provided in Chapter 1, Section 2 (c) of this Title.

- D. Confidentiality of Child Protection Cases:** All child protection cases shall be considered and treated as confidential. It is the child’s right to keep the information of a child protection case in strict confidence. All Judges, the court clerk, tribal employees, tribal officials, involved agency personnel, witnesses and parties who participate in a case shall be sworn to confidentiality under oath. Observers shall not be permitted at the Court proceedings without the express permission of the Tribal Court. No party, witness or tribal official may communicate about the matters of a child protection case unless it is to advance the case plan with the proper release of information in place. Parties may not publically disclose any information on the case including the fact that the child is in tribal custody.

E. Attorneys in the Northway Tribal Court: The use of attorneys for child protection cases is described in Title 2, Chapter 2, Section 10 of the Northway Tribal Judicial Code: “Parties may hire attorneys at their own expense. Attorneys for parties may submit written documents to the court. If attorneys are present or telephonically connected with the Northway Tribal Courtroom, they may speak with their clients and may not speak directly to the Court without the express permission of the Court.”

F. Tribal Court Records of Child Protection Cases: Court records in child protection cases shall not be released to any person or entity besides the Parties to the case without the consent of the Northway Tribal Court. Hard copies of such records shall be kept behind a two-lock system, and records stored on computer hard drives or in cyberspace shall be secured, and shall only be accessible by persons directly authorized by the Northway Tribal Court. Initial Court Orders Granting temporary custody, letters, or memos may be given as needed to schools, hospitals, banks, or similar entities for the purpose of verification of who has custody, guardianship, or parental rights to a child. Court records for child protection cases shall be kept indefinitely.

G. Interference with a Custody Order: Anyone who interferes with a Court ordered placement of a child may be found guilty of harassment, assault, kidnapping, or other appropriate charge and subject to penalty by the Northway Tribal Court, or if the action is in violation of State law, the case may be referred to the State of Alaska for prosecution.

H. Appeals: If a Party takes issue with the application of tribal law or due process of the Northway Tribal Court in a child protection case, a Party may proceed with an Appeal of a final Order of the Northway Court through the Northway Tribal Appellate Court described in Title 2, Chapter 3 of the

Northway Tribal Judicial Code. Such appeal must be filed within 30 calendar days from the date that the Party received the final order of the Northway Tribal Court.

Section 2. Tribal Definition of ‘Child In Need Of Protection’

Child protection cases involve a ‘child in need of protection’ as defined as a child who:

1. Has suffered neglect, including inadequate supervision, failure to thrive, failure to provide for adequate nutrition, housing, emotional, and educational needs and/or exposure to dangerous behavior in the household or vehicles as a result of conditions created by the child's parent, guardian or custodian.
2. Has suffered physical, mental, or emotional harm or there is substantial and immediate risk that the child will suffer such harm as a result of the actions of or conditions created by the child's parents, guardian or custodian involvement in violent or dangerous behavior.
3. Has suffered substantial physical abuse as evidenced by skin bruising, bleeding, fractures of any bone, hematomas, soft tissue swelling, or any other physical injury or impact that may be the result of deliberate and/or inappropriate infliction by the child’s parent, guardian or custodian, or as the result of the failure of such persons to adequately supervise the child.
4. Has been sexually abused, including sexual assault, rape, sexual molestation, sexual exploitation, sexual contact, pornography, prostitution, or otherwise exposed to inappropriate sexual contact either by the child's parent, guardian or custodian, or as a result of conditions created by the child's parent, guardian or custodian or by the failure of the parent, guardian or custodian to adequately supervise the child.

5. Is in need of medical treatment, needs help to relieve or prevent substantial physical harm or mental harm as shown by failure to thrive, severe anxiety, depression, withdrawal, or exaggerated, inappropriate or unusual aggressive behavior or hostility toward others and the child's parents, guardian or custodians are unwilling to provide the medical treatment.
6. Has no parent, guardian, custodian or relative caring or willing to provide care.
7. Refuses to live at home with significant reason, or refuses to accept available care.

Section 3. Authority to Examine a Child for Abuse

Physicians and health professionals may examine any child suspected to be physically/sexually abused and/or neglected without written or verbal consent of the parent/guardian in the event the parent/guardian is alleged to be the perpetrator or otherwise refuses such exam.

Section 4. Mandatory Reporting of Child Abuse and Neglect

Any person, entity, or agency, as a mandatory reporter under State law or not, with knowledge of or reasonable suspicion of abuse or neglect of a Northway tribal child, regardless of where the child lives, is required to report such abuse to the social services staff of the Tribe. Any person who is a mandatory reporter under State of Alaska guidelines shall report such abuse or neglect of a Northway tribal child, to both the Northway social services staff and to the Alaska Office of Children's Services. Mandatory reporters under State of Alaska law include practitioners in the health field, administrative officers of institutions that deal with medical care,

paid employees of domestic violence or sexual assault programs, counseling or treatment programs, school personnel, peace officers, and child care providers.

Section 5. Starting a Child Protection Case

- A. Filing a Petition:** Tribal child protection cases are initiated by the filing of a Petition to Use the Tribal Court with the tribal court clerk. Petitions may be filed by any person who has reason to believe a child is in need of protection.
- B. Decision to take a Case:** The clerk shall contact the available Northway Tribal Court Judges who do not have a conflict of interest with the case and at least 3 Judges must meet and agree that the tribal court should take the case. In deciding to take the case, the Judges shall determine the Court has jurisdiction because the child is a member of or eligible for membership in the Northway Tribe as supported by proper enrollment documentation. Additionally the Judges shall make a determination if it is a to be a child protection case according to the definition of 'child in need of protection' according to the definition in Section 2 of this Chapter. If it is known that the child is a member of or eligible for membership into another tribe, the Judges shall determine what role the other tribe might have according to the options in Chapter 1, Section 2 (C) of this Title.
- C. Official Beginning of a Case:** The case officially begins when the Judges have decided to hear the case and have scheduled a hearing.
- D. If the Court decides not to hear a Case:** If the Court decides not to hear a case, the clerk shall notify the petitioner within 14 calendar days after the decision not to hear the case is made.

E. Beginning a Case by Transfer: Child protection cases may also be initiated when the Northway Tribal Court requests a transfer of jurisdiction in a child in need of protection case from a different court, if it is the best interest of the child to do so.

Section 6. Contents of Child Protection Petition

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

1. The name, address and age of the child.
2. The names and addresses of the child's parents and any custodians of the child.
3. The names and addresses of any other person or tribe with an interest in the child.
4. The reason why the petitioner believes that a child needs protection.
5. Any available written evidence of injuries, abuse or neglect (doctor report, public health nurse report, health protection report, teacher's report, report of witness to injury, abuse or neglect, etc.), and/or any other information that may be helpful in identifying the cause of the child's injuries or neglect.
6. A statement of which tribe(s) the child is a member or with which tribe(s) the child is eligible for membership.
7. Information on any cases that may exist regarding the child in another court.

Section 7. Emergency Child Protective Custody

- A. Emergency Procedures:** The Northway Tribe may take emergency child protective custody actions only when there is probable cause to believe that immediate action is necessary to prevent imminent physical damage or imminent harm to the child. After the tribal court clerk, or tribal administrator or tribal council member in the absence of the tribal court clerk receives a Petition with sufficient reason to believe that immediate action is necessary, any three of the Northway Judges shall decide to hold an emergency hearing, which may be telephonic, and may issue an Emergency Protective Custody Order that a child be temporarily be placed out of their home or other action taken to protect the child. The Emergency Protective Custody Order shall state the emergency nature of the Court's action and shall contain a finding that it was 'contrary to the welfare of the child to remain in the home.'
- B. Notification in Emergency Circumstances:** The Court shall immediately serve the parents, guardians, custodians, foster parents, or relatives with whom the child is placed and any other tribes with an interest in the child due to tribal membership, with a copy of the Order for Emergency Custody. If attempts to notify the child's parents, guardians, custodians, foster parents or relatives with whom the child is placed are unsuccessful, then immediate notifications shall be made to the child's nearest relatives. The Alaska Office of Children's Services shall also be notified.
- C. Duration of Order for Emergency Custody:** A Temporary Order for Emergency Custody shall be valid for 72 hours, after which time a hearing with proper Notice shall be held.

Section 8. Temporary Protective Custody Hearings

- A. Hearing Notice for Initial Temporary Custody Hearing following Emergency Protective Custody:** An initial Temporary Protective Custody Hearing with Notification to all parents, custodians, and/or guardians of the child shall be held within 72 hours of taking Emergency Custody of a child.
- B. Hearing Notice for Initial Temporary Custody Hearings in Non-Emergency Circumstances:** When the Northway Tribal Court receives a Petition to take a child into tribal protective custody in non-emergency circumstances and decides to hear the case, the Court shall schedule a hearing within 30 days and give at least a 10 day Notice of the hearing to all parents, guardians, and/or custodians of the child, and to any other recognized Parties in the case. The Notice shall state what kind of a hearing is being held, and the date, time, and place for the hearing.
- C. Determine the Child is a Member or Eligible:** At the hearing, the Court shall make a determination that it has jurisdiction over the child because the child is a member or eligible for membership into the Tribe as determined by proper enrollment documentation.
- D. Determine that the Child is in Need of Protection:** The Court shall make a determination whether the child is a 'child in need of protection' according to the definition in Section 2 of this Chapter. If the child is not found to be a 'child in need of protection' the Court may decide to return legal custody to the parent(s), custodian, and/or guardian and dismiss the case. If the Court decides the child is a 'child in need of protection', the Court shall conduct the hearing and take all evidence and testimony under consideration.

E. Custody, Directive Options, Placement: The Court shall conduct the hearing and take all evidence and testimony under consideration. The Tribe may take legal custody and place the child in the physical custody of the parents, custodians, or guardian with specific directives, or place the child in an appropriate foster placement or relative caregiver based on the preferences of Chapter 1, Section 4 of this Code. If a child is removed from a home, the Court shall make a finding that it is 'contrary to the welfare of the child to remain in the home' and that 'reasonable efforts were made to prevent removal.' Specific directives may include but are not limited to directing that the child, parent(s), custodian, or guardian take educational classes, alcohol or drug assessments and follow the recommendations of the assessments, psychological or psychiatric assessments and treatment, or such other treatment or programs as it feels are appropriate and are likely to result in the best interest of the child and reunification of the child with the family.

F. Case Plan: The Court shall initiate a case plan based on concerns from the initial hearing on the case, and develop and revise the plan to fit the current needs as long as the tribal court has the case. The progress of the case plan shall be reviewed at a minimum every six months at a Review and Order Granting Continued Temporary Custody Hearing.

G. Temporary Custody Orders: The Court shall issue written Orders for all temporary custody cases that shall be given to Parties in those cases and kept in the permanent records of the Northway Tribal Court. The Court may release Temporary Custody Orders for the use of verification of custody for schools, hospitals, banks and similar entities when necessary.

H. Extension of Temporary Custody Orders: Custody orders may only be extended if there are Review Hearings at least every 6 months, although the

policy of the Northway Tribal Court is to hold Review Hearings at least every 3 months.

I. Monitoring Cases: The Court may designate specific persons or entities to oversee the execution of the Northway Tribal Court Order and monitor the family's progress and report such progress to the Court.

J. Mandatory Reporting of Address and Contact Information Changes: Anyone caring for children in custody shall notify the Northway Tribal Court Clerk within 24 hours of address and other essential contact information changes so that the Court knows how to locate children in custody at all times, including in the event of a natural disaster.

Section 9. Review Hearings

A. Purpose of Review Hearings: The purpose of Review Hearings is to update the Court on the progress of the case plan and to determine whether the child should continue to remain a ward of the Court, or if any conditions of the legal or physical custody should be modified or added. After making a decision based upon the child's best interests, the Court shall state any new decisions made in Review Hearings in a new Order.

B. Timeframes for Review Hearings: While the maximum length of time the Northway Tribal Court may go between review hearings is every 6 months, the policy of the Northway Tribal Court is to hold Review Hearings for all child protection cases at least every 3 months while a child is in the legal custody of the Northway Tribal Court. It is the policy of the Northway Tribal Court to conduct Review Hearings of Guardianships once a year until a child is no longer under a legal guardianship. The Court may convene an Emergency Review Hearing at any time when the Court receives information

about changes in circumstances that may endanger a child's welfare if immediate action is not taken.

C. Request for Review Hearing: While the child is in the legal custody of the Tribal Court, any Party may request in writing that a Review Hearing be held prior to any regular scheduled Review Hearings. The request must include the reason(s) why the Tribal Court should hold a hearing and the Court may grant or deny the request.

D. Notice for Review Hearings: All parties to the case shall receive at least a 10-day Notice prior to regular Review Hearings which shall state what the hearing is about, and the time, date, and place of the hearing. Notice for Emergency Review Hearings shall be given only as reasonably can be served prior to such hearings.

Section 10. Permanency Hearings

Once a child has been in Tribal custody for 12 months, the Court shall make a finding that the Tribe has made reasonable efforts to implement a permanency plan, and shall make this finding at least every 12 months thereafter that the child is in custody. After a child has been in Tribal custody for one year, the Court shall move towards permanency placement and shall hold a hearing where at least 30 days' Notice has been given to all Parties and the Notice contains what the permanency hearing is about. The Court may move to a permanency hearing in less than one year if there are aggravated circumstances where a preponderance of the evidence demonstrates that the biological parent, guardian, or custodian will not, or cannot make changes necessary for the reunification of the family.

The Court may decide at the Permanency Hearing to:

1. Return the child to the parent(s).

2. Continue to maintain temporary protective custody and keep the child as a ward of the Northway Tribal Court if there is compelling reason to continue it such as the parent has made substantial progress toward reunification and it is likely that the child can safely return home in the near future, provided that review hearings are regularly held, and that permanency hearings are held at least every 12 months afterwards.
3. Proceed with an adoption for the child upon the filing of a petition to terminate parental rights.
4. Create a legal guardianship
5. Make another permanent living arrangement that is in the best interest of the child

CHAPTER 3

RELINQUISHMENT AND TERMINATION OF PARENTAL RIGHTS

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Section 1. Cases Where Parental Rights May be Terminated

Parental rights may be terminated in whole or in part in any case involving custody of a child, child protection, where a parent voluntarily consents to relinquish their parental rights, or in the case of an adoption. It is the policy of the Tribe to view involuntary termination of a parent’s rights as a last resort when it is clear that long-term guardianship is insufficient to meet the needs of the child and an adoption has been arranged. Adoptions may not go into effect until the 30-day period has expired for a Party to appeal an involuntary termination of parental rights.

Section 2. Findings Necessary for Termination of Parental Rights

The Court may terminate parental rights to a child only if it finds that the child is a member of or eligible for membership in the Northway Tribe, and:

1. If the parental rights are not terminated, the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child, and that the termination of the parent’s rights and adoption are in the best interest of that child; or

2. The child has been subjected by his or her parent(s) to sexual abuse; or

3. The child has been abandoned in the sense that the parent has failed to maintain a reasonable degree of interest, concern or responsibility as to the welfare of the child, or is a 'child in need of protection' as defined in Chapter 2, Section 2 of this Title; or
4. That the Tribe has offered or helped arrange for appropriate resources to help the parent care appropriately for the child, and it is unreasonable to expect that the parent will ever be able to care appropriately for the child; or
5. Where a parent voluntarily consents to the relinquishment of parental rights.

Section 3. Procedure for Involuntary Termination of Parental Rights

Persons or entities may file a Petition to use the Tribal Court form requesting that parental rights of a person to that child be terminated. The Petition shall contain the name, address and age of the child; the names and addresses of parents, any custodians of the child, and any other person or tribe with an interest in the child; the reason why the Petitioner believes that parental rights should be terminated; and, any available written evidence to support termination of parental rights. If after reviewing the Petition and scheduling and holding a hearing the Court finds that the conditions necessary to terminate the parental rights exist, it shall issue an Order terminating parental rights in whole or in part depending on what is in the best interest of the child. If the Court finds that the conditions necessary to terminate parental rights do not exist, it shall dismiss the case.

Section 4. Voluntary Relinquishment of Parental Rights

Any parent, 18 years of age or older, may voluntarily relinquish his or her parental rights to any minor child. However, no voluntary relinquishment shall be valid unless:

1. The consent is given more than 10 days after the birth of the child. The child may be placed with the prospective adoptive parents or other care giver during this 10-day period; and
2. The consent is given in writing in the presence of the Tribal Court or to a designated representative of the Tribal Court, and
3. The person has been given a full explanation of what the terms and consequences of consent to voluntary termination of parental rights mean, and the Court makes a finding that the person understood what they were doing and knowingly and voluntarily relinquished their parental rights; and
4. The person is informed that they have the right to be provided with an interpreter to explain the voluntary consent, its consequences, and their right to withdraw the voluntary consent, the time limit to do so and the procedure for doing so.
5. If the parent is a minor, the minor's parents or guardian must also consent.

Section 5. Effect of Termination of Parental Rights

If a parent's rights are terminated, they no longer have any right to the child or any responsibility for that child and parental rights are completely severed, unless otherwise provided by Tribal Court Order. If the Court provides for anything less than completely terminated parental rights, the Court shall be very specific. For example, the Court may specifically allow parental participation in specific tribal ceremonies in relation to the child.

Section 6. Child's Tribal Membership Status

Termination of parental rights shall not affect the minor's tribal membership status, nor the child's rights or privileges as an Alaska Native whether written or unwritten, nor shall it affect the jurisdiction of the Northway Tribal Court over the child.

CHAPTER 4

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Section 1. General Provisions for Tribal Adoptions

A. Cultural Adoption and Tribal Court Adoptions: The difference between a ‘cultural adoption’ and a ‘tribal court adoption’ is that the tribal council authorizes a cultural adoption and all Parties have to be in agreement, while a tribal court adoption is done by an Order of the Tribal Court. The Northway Tribal Council may do a ‘cultural adoption’ by completing the cultural adoption paperwork that is provided by the State of Alaska, and submitting it to the Bureau of Vital Statistics for a new birth certificate. The Northway Tribal Court may do a tribal court adoption by the procedures outlined in this Chapter, and submitting a certified Order of Adoption and report of adoption form provided by the State of Alaska to the Bureau of Vital Statistics.

- B. Availability for Adoption:** A child may be adopted only if the child's parents are deceased or if parental rights to the child have been relinquished through voluntary consent or involuntarily terminated by Court Order.
- C. Who may Petition:** Any person who is 18 years of age or older may file a petition with the Court to adopt a child. If the petitioner is married, his or her spouse must also be at least 18 years old and must sign the petition, unless the spouse's whereabouts are unknown or unless waived by the Court. A person who wants to adopt a child may request that the Northway Tribal Court consider the matter by filing a Petition to use the Tribal Court.
- D. Placement Preferences:** The Court shall consider what is in the best interest of the child in all adoption cases, but shall hold the general policy that Native children be adopted by Native persons and shall follow the placement preference guidelines in Chapter 1, Section 4 of this Title.
- E. Adoption Records:** All adoption records shall be kept by the Tribe indefinitely in a secured location, and may only be accessed by the persons designated in the Court's record retention and access policy.

Section 2. Contents of Adoption Petition

The Petition to use the Tribal Court shall be accompanied with a complete pre-adoption home study report and criminal history report. The Petition shall include, but not limited to:

1. The name, address and age of the person to be adopted; cultural heritage and tribal enrollment or eligibility.
2. The names and addresses, if known, of the person's biological parents and any custodians of the person.

3. The names and addresses of any other person or Tribe with an interest in the adoption proceeding or in the person to be adopted.
4. Whether the Petitioner has reason to believe that the biological parents of the person to be adopted oppose the adoption.
5. If the person to be adopted is a minor child, the facts which make the petitioner believe that the best interest of the child to be adopted require that an adoption Order be issued by the Court.
6. A statement of which tribe(s) the person to be adopted is a member or with which tribe(s) the person to be adopted is eligible for membership. If the person to be adopted is a minor child, this statement should include facts that indicate that the Northway Tribe is the tribe with the most significant contacts with the child.
7. The name the Petitioner(s) intends to give the child after the adoption.
8. Whether the child has any property and if so, what that property is.
9. Any relationship between the Petitioner(s) and the child.
10. Where the Petitioner(s) was born, their present age and occupation, and their cultural heritage.
11. The names and ages of any children and of any other persons residing with the Petitioner(s).
12. Any evidence of alcohol or drug abuse, or domestic violence within the Petitioner's household.

13. Any other facts and circumstances relating to whether or not the adoption should be granted.

Section 3. Homestudy

The Court may Order a homestudy completed for the proposed adoptive home. The Petitioner(s) may be required to pay costs involved in the homestudy. The homestudy shall include an evaluation of the home for all of the factors for determining the best interest of the child and anything else the Court requires. If the Court has appointed a guardian ad litem, including a Tribal Family Youth Specialist or tribal social worker to look after the best interest of the child, the homestudy shall state what recommendation the guardian ad litem makes regarding the granting of the Adoption Order. The Homestudy shall be submitted to the Court with a Petition for Adoption.

Section 4. Adoption Hearing and Adoption Order

The Court shall set a hearing date within 40 days after a Petition accompanied by a homestudy report and criminal background check is filed. The Court shall send a copy of the Petition to all Parties and shall give all Parties at least 20 days Notice. Biological parents shall be notified unless their parental rights have been terminated or voluntarily relinquished. The hearing shall be closed and only those persons the Court finds to have a legitimate interest in the proceedings may attend. The hearing shall generally follow the procedures set forth in Chapter 2 of the Northway Judicial Code. The Court may issue a tribal Court Order of Adoption if it finds the following things:

1. The biological parents have consented to the adoption or have had their parental rights terminated in Tribal Court or the Court of any other jurisdiction, or have voluntarily relinquished their parental rights, or are

unavailable after diligent efforts to locate them have been made, to consent to the adoption.

2. If the person to be adopted is 14 years old or older and he or she consents to the adoption and appears in Tribal Court to assure the Court of their consent. If the child does not consent to the adoption, the child has the right to appear in court, testify that they do not consent, and the Court shall not grant the adoption.
3. If the person to be adopted is a minor child, the Court finds that it is in the child's best interest as defined in Chapter 1, Section 3 of this Code, to be adopted by the Petitioner(s).

Section 5. Open Adoptions

- A. Visitation:** The Court may require that specific persons with whom the child has emotional or blood ties shall have contact with the child, including biological parents. Contact includes sending letters, gifts, phone calls, and electronic communication. Physical visitation shall only occur with the consent of the adoptive parent, but shall not be denied unless it is in the best interest of the child to do so. Information concerning specific details of such contact shall be incorporated into the adoption Order.
- B. Open records:** It is the policy of the Northway Tribal Court that children who have reached the age of 18 and were adopted through the Northway Tribal Court have access to the tribal court records of their adoption, provided that a biological parent has not enclosed a signed and notarized affidavit stating that the records remain sealed indefinitely. Even in the case of a signed and notarized affidavit, the Northway Tribal Court may allow the records to be opened for good cause such as to trace a potentially fatal genetic condition.

Section 6. Effect of Adoption Order

The Northway Tribal Adoption Order creates the relationship of parent and child between the Petitioner(s) and the adopted person, including the right to inherit. The Adoption Order does not terminate the child's right to inherit from their biological parent(s). An Order of Tribal Adoption does not affect the child's tribal membership status or the child's rights or privileges as an Alaska Native whether written or unwritten, nor shall it affect the jurisdiction of the Northway Tribal Court over the child.

Section 7. Birth Certificates

The tribal court clerk shall assist with filing the proper paperwork with the State of Alaska Bureau of Vital Statistics, and the adopting parent shall be responsible for paying the fee required for issuing the new certificate. The State of Alaska provides forms for obtaining a new birth certificate following a tribal court adoption. A certified copy of the tribal court Order of Adoption must be submitted with the form.

CHAPTER 5
GUARDIANSHIP OF MINORS

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Section 1. General Provisions for Guardianship

A. Definition of Guardianship: “Guardianship” means a legal relationship assigned by the tribal court whereby the guardian has the duty and responsibility care for a minor child and to make legal, financial, health and education decisions for a minor child until they reach the age of 18

B. Tribal Policy: It is the policy of the Northway Tribal Court that reunification of families is the first and highest goal in child placement, and if this is not possible, that young children under the age of 14 be given permanency through adoptions. The third choice for placing children, preferably those 14 and older, is in long term guardianships.

C. Placement Preference: When tribal children are placed under a guardianship, the Northway Tribal Court shall follow the child placement preferences outlined in Chapter 1, Section 4 of this Title.

Section 2. Petition for Guardianship

A. Who may file: A person at least 18 years old may file a petition with the Northway Tribal Court requesting that he or she be appointed as the long-term guardian of a child. If the person is married, the spouse must be at least 18 years of age, and must also sign the petition.

B. Contents of Petition: A Petition for a long term guardian shall include:

1. The name, birth date, residence, and tribal status of the child who is the subject of the Petition.
2. The name, birth date, residence, and tribal status, if known, of the child's parent(s) and of the petitioner(s).
3. If the child is residing with someone other than a parent, the location and length of time at that location.
4. A statement by the petitioner(s) of the facts and reasons supporting his or her request to be appointed as a guardian.

Section 3. Background History, Home Study and Other Information

The Court shall require a background history report, and a complete homestudy report including information as to the petitioner's financial ability to support the child to be filed with a Petition for Guardianship. Additionally, the Court may accept information from any person with knowledge about the potential guardian, and their recommendation as to the suitability of the guardian.

Section 4. Guardianship Hearing

- A. Setting the Hearing and Notice:** When the Court receives the Petition, it shall set a hearing date not more than 60 days after receiving it, unless there is good reason to extend the time period. Notice of the hearing shall be served at least 20 days prior to the date of the hearing to any biological parents, petitioner, to the youth if the youth is at least 14 years of age, and to any Parties the Court or Parties deem necessary for the hearing.

- B. Purpose of Guardianship Hearing:** The Court shall conduct the hearing to determine whether appointment of a guardian is in the best interest of the youth.

- C. Hearing Procedure:** The Guardianship hearing shall follow the general procedures of Northway Tribal Court hearings outlined in the Judicial Code, and shall be private and closed. Only those persons the Northway Tribal Court determines to have a legitimate interest in the proceedings may attend. The Court shall hear testimony to determine whether a long-term guardianship is in the best interest of the child. The Court shall consider all guardianship reports submitted for review. All Parties shall be given the opportunity to contest the factual contents and conclusions of the guardianship reports and testimony.

Section 5. Grounds for Appointing a Guardian

If the Northway Family Court finds that the child is without care or custody, that the petitioner(s) can provide appropriate and adequate parental care for the child, that the guardianship is in the best interest of the child, and that the placement falls within the guidance for child placement in Chapter 1, Section 4 of this Code, it shall order long-term guardianship pursuant to the Petition. The Court must have clear and convincing evidence that:

1. The parent(s) have consented in writing to the guardianship, or
2. The youth is a child in need of protection as defined in Chapter 2, Section 2 of this Title.

Section 6. Limitations to and Powers of the Guardian

The Court may define or limit the powers of the Guardian. If the Court does not define or limit the power of the guardian, the guardian has all the rights and responsibilities of a parent except that the following shall require Court approval:

1. Dispose of any real property or tribal benefits the child has
2. Approve sterilization of the child
3. Enroll the child to another tribe that they wouldn't otherwise be eligible for without the express permission of the Northway Tribal Court.
4. Move outside the State of Alaska
5. Place the child in another home or with any agency

6. Consent to any adoption of the child under any court other than the Northway Tribal Court.

Section 7. Change of Address

Guardians shall always have a valid address and contact information on file with the Northway Tribal Court, and shall notify the Court in writing of any change of address within 24 hours of moving. Guardians may not move out of Alaska without approval of the Northway Tribal Court.

Section 8. Visitation

The Court may order visitation between the youth and parent(s) or any other person if the Court finds such visitation is in the best interest of child, with specific recommendations regarding the safety of the child in such visitation.

Section 9. Court Review of the Guardianship

The Court shall order yearly or more frequent reviews of the guardianship.

Section 10. Child's Assets

- A. Existing Trusts:** If the child's property is subject to a trust (for example, where a parent has died leaving property to a child in a trust set up in the will), the guardian is bound by the trust provisions. The Court has the power to review any trust in connection with appointment of a guardian and to impose any protections necessary to enforce the trust, to ensure that the guardian fully and regularly accounts for trust funds, and to see that the funds are properly managed.

B. Removal of a Guardian for a Child's Property: The Court has the power to remove a guardian for a child's property and appoint a replacement guardian whenever necessary for the child's best interest.

C. Upon reaching 18: When a child whose property is in the guardianship reaches the age of 18, he or she may petition the Court to terminate the guardianship and enter such orders as may be necessary to place him or her in control of his or her property and earnings.

Section 11. Termination of Guardianship

A. General Rule for Termination of Guardianship: Generally, a long-term guardianship shall terminate upon the death, marriage, emancipation, adoption, or 18 birthday of the child (unless continued by the Court) or upon Order of the Court.

B. Return to Parents in Some Circumstances: Upon the Petition of a parent of a child in long-term guardianship, the child may be returned to the parent, after Notice and a hearing, upon a showing by clear and convincing evidence that the parent is willing and able to resume permanent care of the child and that the return to the parent is in the best interest of the child.

C. Termination if Child Becomes in Need of Protection: The Northway Tribal Court may terminate the Guardianship if the Guardian has caused the child to be a child in need of protection as defined in Chapter 2, Section 2 of this Title.

CHAPTER 6
CHILD CUSTODY ARRANGEMENTS

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Section 1. Custody Arrangements and Best Interests of the Child

Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this Chapter, the best interest of the child shall be the standard by which the Tribal Court determines and allocates parental responsibilities. The Tribe recognizes the fundamental importance of the parent-child relationship and that the relationship between the child and each parent should be fostered unless inconsistent with the best interest of the child. The best interests of the child are served by a parenting arrangement that best maintains a child’s emotional growth, tribal and cultural ties, health and stability, and physical care.

Section 2. Beginning a Child Custody Arrangement Case

A Child Custody Arrangement Case involves children who are not 'in need of protection' as defined in Chapter 2, Section 2 of this Title. The Northway Court may hear cases involving custody disputes between parents to decide what custody arrangements shall be made. The Northway Court may also hear cases when parents agree on a custody arrangement plan and wish to have the Northway Court certify the plan through a Court Order. A child custody case shall be started by filing a Petition to use the Tribal Court for Child Custody by one or both parents.

Section 3. Contents of Child Custody Petition

1. The Petition for child custody shall provide the following information:
2. The name, address and age of the child.
3. The names and addresses of the child's parents and any custodians of the child.
4. The names and addresses of any other person or tribe with a specific interest in the child.
5. The reason the Petitioner is requesting custody of the child, or for the Court to Order custody arrangements agreed upon by parents, guardians, and/or custodians of the child.
6. The facts that make the Petitioner believe that the best interest of the child require that a custody Order be issued by the Court.
7. A statement of which tribe(s) the child is a member or with which tribe(s) the child is eligible for membership; and

8. The Court may require a home study, criminal history report, and other additional information to accompany the Petition.

Section 3. Determining Jurisdiction and Whether or Not to Hear a Case

Upon receiving a Petition for Child Custody Arrangement, the Court shall determine whether or not it has jurisdiction over the child or children, and whether or not the Court wishes to hear that case. If the Court decides not to hear the case, the Court Clerk shall notify the Petitioners within 10 days after the decision.

Section 4. Custody Hearing Notice and Hearing Purpose

A. Custody Hearing Notice: After the Court determines that it has jurisdiction and decides to hear a custody arrangement case, the court shall schedule a hearing and issue a Notice of Hearing to the parent(s), custodian, or guardian of the child, and to any Parties that the Court determines to have a significant interest in the Child, at least thirty days prior to the hearing, or as soon as is reasonable and agreed upon by the Court and to all Parties in the case. The Notice shall state the purpose of the hearing, which is to make a decision about who should have custody of the child, and what visitation if any should be awarded for those persons who do not have custody.

B. Witnesses and Evidence: At the custody hearing, all Parties shall have an opportunity to present evidence and to question all witnesses. The Court shall consider the information provided in home studies, background checks, and may call any person with knowledge of the parents or children to speak to the Court. A guardian ad litem may speak on behalf of the child, and children at least 12 years of age may speak to the Court directly. The Court may also order an investigation of the facts contained in a Petition, report, affidavit, or testimony.

C. Attorneys in the Northway Tribal Court Room: Parties may hire their own attorneys at their expense. Attorneys may submit written documents to the Court, and may be in the Northway Tribal Court proceeding, provided that they may speak with their clients but not directly to the Tribal Court without express permission of the Northway Tribal Court Judges serving on the case.

D. Custody Decisions: If both parents agree on a Child Custody Arrangement, the Court shall confirm the Arrangement in an Order of the Court, if the Court determines it to be in the best interest of the child. If parents do not agree on a Custody Arrangement, the Court must decide what the arrangement shall be based on the best interest of the child. Unless it is shown to be harmful to the child, the child shall have reasonable equal access to both parents, and determine a reasonable visitation schedule, and details about associated costs of visitation, types of contact, and any other information specific to visitation that is in the best interest of the child.

Section 5. Existence of Domestic Violence and/or Drug Abuse:

If the Court finds by clear and convincing evidence that a parent or child is a victim of domestic violence, and/or subject to drug abuse by the other parent, the Court may make an Order that adequately provides for the safety of the victimized parent and child including any of the following:

1. The address and contact information of the parent or child be kept confidential in the proceedings.
2. An exchange of the child to occur in a protected setting.

3. Visitation be supervised by another person or agency with any conditions of visitation stated specifically within the Order. The perpetrator may be ordered to pay a fee to defray the costs of supervised visitation.
4. The perpetrator of domestic violence attends and completes a domestic violence batterer's program and/or counseling.
5. Prohibit overnight visitation.
6. Order that the perpetrator of domestic violence not remove the child from a certain area or community during visitation.

Section 6. Custody Order and Request to Change Order

- A. Custody Order:** The Court shall issue their decision of Custody arrangement, physical custody and visitation arrangements, through a written Order.
- B. Request to Change Order:** A parent may request an award of custody of a child or visitation with a child to be modified by filing a Petition to use the Tribal Court form, if new information or a new situation arises that the Court should consider for protecting the best interest of the child through an amended Custody Arrangement. It is up to the discretion of the Court to hold a hearing to consider the request in the Petition. If the Court decides to hold a hearing based on the Petition, reasonable Notice shall be provided to all Parties. Any new decisions of the Court shall be made through a new Custody Order.

Section 7. Child Support

The Court may order a parent to pay child support to the child's custodian, and may take into account the parent's ability to contribute in cash or in goods and also the child's needs. The Court may also work with the Alaska State Court system in ordering and enforcing child support payment.

CHAPTER 7

TRIBAL FOSTER HOME LICENSING

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Section 1. Purpose

The purpose of this Chapter is to insure the health, safety, welfare, and the highest quality of care for all children who are placed in foster homes. In fulfilling this purpose, the Tribe shall strive to meet the standards and procedures contained in “Alaska Tribal Foster Care Standards” developed by the Alaska Tribal/State Collaboration Group (and future amendments made by that Group) in carrying out the licensing and monitoring of tribal foster homes.

Section 2. Tribal Licensing Authority (TLA)

The Northway Tribal Council shall be the Tribal Licensing Authority (TLA) for the Northway Tribe for licensing tribal foster homes, and may delegate authority to tribal staff and authorized technical assistance partners to carry out specific duties regarding foster home licensing and monitoring.

Section 3. Application Process for Foster Home Licensing

Individuals or families desiring to provide foster care services subject to the jurisdiction of the Tribe shall apply in writing to the Northway Tribal Council. The application shall include:

1. A statement as to whether the applicant has ever operated or currently is operating a licensed/certified care facility or foster home for children or adults, and reasons for any termination of such license or certification

2. A statement demonstrating that the applicant has resources sufficient to meet the needs and ensure the stability and financial security of their family, independent of any foster care maintenance payment.
3. Verification that the applicant is 18 years of age or older.
4. Names and addresses of at least 4 persons, 3 of whom are not related to the applicants, who have known the applicant for 2 years or more and can attest to their character and ability to care for children. The Tribal Council may contact schools, employers, adult children, and other sources for references.

Section 4. Criminal History Safety Checks

A. Criminal History of Applicants and Household Members: Applicants and members of the household age 16 years and older shall consent to a criminal record check and will provide fingerprints for the purpose of state and federal criminal records checks. The Council must determine that none of the individuals in the household has a criminal history that would prohibit him/her from being a foster parent or household member in a licensed foster home as per the following:

1. A conviction of a felony, or admission of, or substantial evidence of an act of assault, or child battering, child abuse, child molesting or child neglect, spousal abuse, a crime against a vulnerable person, child or children (including child pornography), or a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery.

2. Chemical/alcohol dependency, unless the individual(s) identified as chemically dependent has been chemically free for at least 12 months.
3. The applicant's own minor children cannot be in foster care, a correctional facility or residential treatment for emotional disturbance within the previous 12 months if, in the judgment of the Council, the functioning of the family has been impaired.
4. Felony conviction within the previous five years involving physical assault, battery or a drug-related offense or at the discretion of the Council within the previous 10 years.

B. Criminal History of Employees or Volunteers in a Foster Home: The Council shall require that any employee or volunteer in a foster home, or any individual living in a part of the foster home where the individual would have direct access to children in care, meet the criminal background requirements for foster parents described in these standards.

C. Applicants who have a Criminal History: Applicants who would like to be licensed may submit a request in writing to the Council five years after a conviction of a felony physical assault, battery, or a drug related offense. The Council will review and consider the circumstances surrounding the crime and conviction; the probability of the applicant committing future offenses; rehabilitation (including counseling, therapy, and education); and the relationship between the offense and the applicant's ability to be a foster parent. The Council will respond to the request within 45 days.

D. Child Protective Services (CPS) Background Checks: Before the applicants are licensed and/or approved for placement of a child, the Council shall check any child abuse and neglect registry for information on any prospective foster parents and on any other household members age 16 and

older. The Council will obtain a “release of information” from the applicants, all household members age 16 and older, employees or volunteers, giving the Council permission to submit each individual’s information for a CPS background check and if possible, juvenile delinquency (JOMIS) check.

1. The Council shall check any child abuse and neglect registry that the Tribe or State maintains for such information.
2. The Council shall make a request to any other state or tribe that the applicants or other household members age 16 and older have resided in the previous five years, to check any child abuse and neglect registry maintained by such other state or tribe.
3. The Council will obtain reports, or where not available, a statement by the applicants citing all allegations of child abuse and neglect, with dates and locations and resolution of those allegations for the applicants, all household members age 16 and older, employees and volunteers.
4. If any of the individuals are found to have been the alleged perpetrator in a substantiated report of harm or there is an open case or report of harm in which the individual is/was involved, the Council will not issue a license to that individual or allow the individual to reside in a licensed foster home.

Section 5. Types of Licenses, Variances, Waivers, and Modification

A. Initial License: This includes licenses issued for emergency placements, where there are still some steps to be completed. In order to issue an emergency license, the following background checks must be completed for all household members age 16 and older: 1) safety checks; 2) a Court View (on-line) check for all charges; 3) child protective services background checks; and 4) a check of the sex offender registry. Prior to

completion of licensure, the designated staff must walk through the home and make contact with one or more caregivers and other available household members. The initial license shall expire one year from the date of issuance and may be renewed via an application for licensure. Completed renewal applications must be submitted to the Council 45 days before expiration of current license.

B. Biennial License: Once a home has an initial license, and the foster parents reapply and meet all requirements, the Council will issue a biennial license that will be in effect for two years. The foster parents are required to complete an Annual Self-Monitoring Report each year. Before the expiration of a biennial license, the Council will reassess compliance with all licensing standards. If all the standards have been met, the Council will renew the biennial license for another two years.

C. Variances and Waivers in Licensing: Variances may be requested by the foster parents for non-safety standards only. Variances will not be approved for the criminal background checks requirements and other safety standards. The Council will consider requests on a case-by-case basis to ensure that the variance allows the foster home to meet the standard in another way and will approve or deny the request based on their findings so as to protect the health, safety, and well-being of the children.

D. Capacity for Licensing Approval: The Council will determine the appropriate number and ages of children for which the foster home will be licensed. The foster home shall not exceed the licensed capacity or accept a child outside of the licensed age range for placement unless the requirement is waived. To ensure the health and safety of all children in the home, the COUNCIL will consider the ratio of adults to children, the level of supervision available, the skill levels of the foster parents, the

health, safety and special needs of the children in the home, and the local standards in the community when determining the license capacity and age range for the foster home. The number of children in the home will not exceed the limit that would assure that the needs of each child in the home can be met.

E. Modifications of Licensing: The Council may modify the licensed age range or capacity based on a request from the foster parents. An assessment of the results of the requested change will be made by the Council that ensures the home meets the health, safety, and developmental needs of the children placed. If the Council determines that a license will be modified for a change in capacity or age range, a new license reflecting the change will be issued.

F. Denial of Licenses: Licensure may be denied if there is evidence that the applicants and members of the household age 16 years and older, or the physical home does not meet the requirements. Notification of denial shall be in writing to the applicants. Applicants may reapply if the standards are met. The Council may deny a license if the applicant(s) falsifies any application information or documentation. This includes acts of omission. Foster parents may appeal the denial of their license by making a written request to the Northway Tribal Court.

G. Close Out: Foster parents may close out their license at any time by submitting written notice to the Council. If the foster parents fail to renew their application, the Council will close out the license.

H. Suspension: The Council may suspend a foster home license due to violations of one or more licensure rules or conditions in the foster home that render it unsafe. A Notice of suspension must be in writing and list all violations, along with the actions necessary to meet the standards and

shall include any services available to assist the foster parents in correcting the violations. The foster parents must remedy the situation within 14 days and notify the Council in writing. Children in placement will be removed from homes with suspended licenses. No placements will be made during the period of suspension.

- I. Revocation:** The Council will revoke a foster home license when child safety concerns warrant an immediate revocation. Foster parents may appeal the revocation of their license through the Northway Tribal Court within 30 days after receiving the Notice of revocation.

- J. Termination:** If a license was revoked or suspended, and the issue not addressed or the appeal not granted, the Council may terminate the license. Foster parents may appeal the termination of their license through the Northway Tribal Court within 30 days after receiving the Notice of termination.

Section 6. Foster Parent Characteristics and Training

- A. Foster Parent Personal Characteristics:** Foster parents shall possess personal qualities of maturity, stability, flexibility, ability to cope with stress, capacity to give and receive love, and good moral character. Such characteristics are further described in the Alaska Tribal Foster Care Standards.

- B. Foster Parent Training:** Foster parents shall complete a minimum of 10 hours of training annually. Foster parents in a two-parent foster home shall each complete a minimum of 5 hours annually. Training may be accomplished through on-site trainings, self-study packets, electronically received training materials, or other training approved by the Council. Training is required in order to continue being fully licensed. Relative

foster parents may request waivers for specific training hours on a case-by case situation. Within the first year of licensure the Council shall require at least one foster parent in the home to possess a current Infant/Child Cardio Pulmonary Resuscitation (CPR) certification. Prior to licensure for special services, foster parents must have structured opportunities for achieving knowledge and skills necessary and pertinent to specific special needs as agreed to in their foster care agreements with the Council.

Section 7. Home Environment

In order to be a tribally licensed foster home, the home environment shall meet the standards listed in the Alaska Tribal Foster Care Standards and shall be inspected by tribal staff prior to licensing, and after licensing to monitor the home conditions children are placed in. Sleeping areas for foster children shall be safe and have adequate space, in accordance with the standards of the local community. There shall be sufficient natural light and ventilation and have easily accessible, safe emergency access and exits to and from the room and home. Sleeping arrangements with other children shall follow the guidelines outlined in the Alaska Tribal Foster Care Standards.

Section 8. Care and Development of the Child

A. Basic Care: Foster Parents shall follow the guidelines in the Alaska Tribal Foster Care Standards for providing the daily living care for foster children placed in their care. Standards cover infant care, care for toddlers, care for children, and adolescents.

B. Clothing and Personal Belongings: Foster parents shall provide each child placed in their home with his/her own clean, well-fitting, seasonal clothing that is appropriate to age, sex, individual needs, and meets local community standards. Foster parents shall keep a list of all personal items

for the children placed in their home. Foster parents shall allow children placed in their home to bring and acquire personal belongings. Foster parents shall send all personal clothing and belongings with the children in care when they leave the foster home.

C. Food and Nutrition: Foster parents will provide nutritious, daily meals (and whenever possible, traditional foods) to ensure the health, spiritual, physical, emotional, and mental development of the children placed in their home. Foster parents will provide for any special dietary needs of the children placed in their home. If foster parents have any reason to believe that a child placed in their home has undiagnosed special dietary needs they will consult with medical professionals after notifying the child's caseworker.

D. Preserving Connections with Family, Friends, Religion, and Culture: Foster parents shall support the child's ties with family, friends, neighborhood, and Tribal community. Foster parents shall recognize, encourage, respect and support the religious/spiritual beliefs, ethnic and cultural heritage, and language of a child's family. Foster parents shall, within reason, arrange transportation to ethnic and cultural events that, based upon the child's background, are appropriate for the child. Foster parents shall encourage the children placed in their home to participate in age appropriate Tribal activities and events, including recreational, cultural and subsistence activities. In accordance with the child's case plan, the foster parents shall participate with the child's caseworker to arrange transportation to Tribal events. Foster parents shall not require children placed in their home to participate in activities that may demean their Native heritage or violate cultural tenets or beliefs.

E. Health and Safety Needs: The child's caseworker shall provide the full health records of the child to the foster parents upon placement in their

home. At the time of placement or as soon as possible, the child's caseworker will ensure Medicaid coupons or other medical coverage (Denali Kid Care, Indian Health Service, etc.) are provided to foster parents in order to access medical services for children in their care. Foster parents are accountable for the safety of children placed in their home at all times whether or not they are supervising the activities of the children. Foster parents are encouraged to contact the child's caseworker with any concerns about the child's health. Foster parents shall work with the child's caseworker to ensure that health care needs of children placed in their care are met, including arranging or providing transportation to medical, dental and counseling appointments as needed. Foster parents shall follow the guidelines of the Alaska Tribal Foster Care Standards in providing for the safety of children in their care.

F. Educational Needs: The child's caseworker will provide the child's educational records to the foster parents upon placement. Foster parents will enroll each child of school age placed in their home of school age in a school within five school days of placement or in accordance with the child's case plan. Every effort will be made to keep the child in the same school that he/she attended prior to placement. If foster parents wish to pursue home schooling of a child placed in their home, the child must be enrolled in a full-time correspondence program approved by the Alaska Department of Education. Foster parents must seek prior approval from the child's caseworker. Foster parents shall be actively involved in educational programs for the child in care that are appropriate for the child's age, abilities, and in accordance with the child's case plan. Foster parents will plan with school personnel when there are issues with the child in school, and report to the child's caseworker, any situations that may require follow up or attention.

G. Transportation Safety: Foster parents shall provide or arrange for safe transportation for children placed in their home to attend any kind of activity (including but not limited to school, recreational, and medical activities). Foster parents shall maintain all personal vehicles owned by them and used to transport any of the children in the home in a safe operating condition, in accordance with the standards of the local community. Any vehicle used to transport any of the children in the home must be smoke-free.

Section 9. Expectations and Limits on Discipline

Foster parents shall teach and discipline the children placed in their home with caring, kindness, and understanding. Foster parents shall set clear expectations, limits, and consequences of behavior. Foster parents shall teach each child placed in their home with praise and encouragement. Foster parents shall use effective child-rearing practices that will enable children to grow and develop and are required to submit the appropriate form regarding methods of discipline. Foster parents shall use non-punitive ways of discipline and ways of helping a child build positive personal relationships and self-esteem. Foster parents may not use discipline or a behavior management technique that is physical, cruel, humiliating, or otherwise damaging to the child. For example, foster parents cannot spank or withhold food for any type of punishment. No child in care or other child in a foster home shall be subjected to corporal punishment, physical abuse, sexual abuse, sexual exploitation, neglect, emotional abuse, mental injury, or threats of harm.

Section 10. Alternate Caregivers

The foster parents shall arrange for safe and responsible childcare for short absences (up to 6 hours) excluding day care for working foster parents (i.e. occasional babysitting). When the foster parents are absent overnight, or longer,

a responsible person of at least 18 years of age, capable of assuming foster care responsibilities, shall be present in the same home to supervise the children placed in their home. The foster parents shall provide contact information where they can be reached during their absence. Foster parents shall not leave children placed in their home for more than 48 hours without first giving notice to both the Council and the child's caseworker.

Section 11. Foster Parent Duty to Cooperate with the Council

Foster parents shall cooperate with the Council in investigations involving their license, investigations of Reports of Concerns (Harm), developing and implementing the case and service plan of a child placed in their home, and executing all court orders regarding a child placed in their home. Foster parents and the child's caseworker must sign and abide by the terms of a Foster Parent Agreement that details child specific responsibilities. Foster parents shall report immediately to the Council occurrences of unusual incident such as the death or serious injury/illness of a child placed in their home.

Section 12. Confidentiality

Foster parents and household members shall treat personal information about a child placed in their home and the child's family in a confidential manner. Confidential information may be disclosed only when necessary to provide for the safety and well-being of children in care as required by Tribal, State, or Federal law. The information shared must be limited to only what is necessary to comply with these requirements/laws. This duty, not to disclose confidential information, applies during placement and forever thereafter.

Section 13. Record Maintenance by the Council

The Council shall maintain records on all aspects of the licensing process throughout the duration of the license.

Section 14. Record Maintenance by Foster Parents

Foster parents shall maintain records on all aspects of the life of a child placed in their home during placement, including the physical and mental health care received, immunizations, educational, and placement progress. Within 10 days of the termination of a foster care placement, the foster parents shall relinquish all records to the child's caseworker. Foster parents shall keep such written records for each child placed in their home in a manner that ensures the child's confidentiality.

Section 15. Sovereign Immunity

The adoption of this Code is not a waiver of the Tribe's sovereign immunity, which may only be waived by express waiver through written agreements for which it is a requirement.

CHAPTER 8

DOMESTIC VIOLENCE

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Section 1. Definitions

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

“**Ex Parte Order**” is a domestic violence Protective Order that may be issued under emergency circumstances to a Petitioner without prior notice to the respondent. Ex Parte Orders shall be valid immediately upon the Court so order and valid for no more than 20 days.

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

“Respondent” shall be the perpetrator of domestic violence.

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

Section 2. Cooperative Enforcement of Protective Orders

In accordance with the full faith and credit provision of the Violence Against Women Act, 18 U.S.C. Section 2265, the Northway Tribal Court shall recognize protective orders issued by states or other tribal governments. The Northway Court may forward a certified copy of any active tribal protective orders to the Alaska State Court system for registration in the statewide protection order registry. Any valid protective order issued by the State of Alaska, another state, or another tribe that is filed with the Northway Tribal Court Clerk shall be accorded full faith and credit by the Northway Tribal Government.

Section 3. Beginning a Case

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

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

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

1. The name, address and age or date of birth of the person to be protected.

2. The names and addresses if known of the person's custodians, if any.
3. The names and addresses of any other person or tribe with an interest in the domestic violence proceeding.
4. Whether the Petitioner is the victim or whether some other person is the victim, and if so, the Petitioner's relationship to the person to be protected.
5. The facts that make it necessary for the person to be protected.
6. The conditions the Petitioner wants imposed on the respondent.

Section 5. Ex Parte Protective Orders

In immediate emergency circumstances, the Court may hold an emergency hearing to consider the issuing of an Ex Parte Protective Order. If the Court finds that the Petitioner, or victim if other than the Petitioner, has been subjected to domestic violence, it may grant an Ex Parte protective order under this Section without written or oral Notice to the Respondent so long as it appears that there is a substantial likelihood of immediate danger from the Respondent to the health, safety, or welfare of the victim or a member of his or her household from the Respondent and a reasonable attempt has been made by the Northway Tribal Court to notify the Respondent of the hearing to issue an Ex Parte Protective Order. This Ex Parte Protective Order shall remain in effect for 20 days after it is issued unless dissolved earlier by the Court, after a hearing is held and Notice provided to the Parties of the hearing to consider the dissolution of an Ex Parte Order. To replace an Ex Parte Order with a Protective Order, the Court shall notify the Parties at least 5 business days before a hearing is held to consider the matter, and give those persons the right to respond and appear at the hearing either in person or telephonically.

Section 6. Hearing for Protective Orders, Notice, and Length of Orders

- A. Hearing after an Ex Parte Order has been granted:** A hearing may be held within 20 days of the granting of an Ex Parte Protective Order to consider the issuing of a Protective Order, provided that the Court shall provide Notice to the Parties at least 5 business days prior to the hearing. The hearing may proceed regardless of whether or not the Respondent participates.
- B. Hearing for a Protective Order:** The Court may hold a hearing for a Protective Order when an Ex Parte Order has not been issued upon Notice to all parties of at least 10 business days. The Court may order a Protective Order if the Court finds a preponderance of evidence that the Respondent has committed an act involving harm against a victim.
- C. Length of Time for Ex Parte and Protective Orders:** Ex Parte Orders may be issued for up to 20 days following an Emergency Hearing. Protective Orders may be granted for up to 6 months from the date of the hearing, unless the Court determines that for safety reasons, it is in the best interest of the victims and Tribe to grant the Protective Order for a longer period including up to life of the person/s being protected. If a Protective Order expires, the Court may hold a new hearing and may or may not issue another Protective Order. All Parties shall be given at least 10 business days' Notice in advance.

Section 7. Contents of Ex Parte and Protective Orders

At either an emergency hearing for an Ex Parte Protective Order or at a hearing for a Protective Order, the Court may decide that an Ex Parte Order or Protective Order contains any of but not limited to the following:

1. Temporary, conditional based on obtaining various types of treatment, or permanent banishment of the Respondent from the Village site as defined in the Order.
2. That the Respondent be restrained from threatening to commit or committing domestic violence, stalking, or harassment.
3. That the Respondent move out of the home of the victim, regardless of the ownership of the residence.
4. That the Respondent not communicate directly or indirectly with the victim (this may include no telephone calls, email, digital social network, letters, or in-person contact, depending upon the Court's Order).
5. That the Respondent not enter any propelled vehicle in the possession of or occupied by the petitioner. That the Respondent stay away from a victim who is boarding a boat, aircraft, or any other motor vehicle.
6. That a peace officer accompany the victim to the victim's residence to obtain personal property or children if the victim has custody of the children.
7. An award of temporary custody of the minor child(ren), with a possible visitation provision with a minor child if the safety of the child and the victim can be protected.
8. If visitation is allowed, the Court may order visitation under specific conditions.
9. That the victim has possession and use of vehicles and other essential personal items, regardless of ownership of the items.

10. That a Respondent pay support to a victim or for a minor child in the care of the victim if the Respondent has a legal obligation to support the child.
11. That the Respondent pay medical or other expenses of the victim that resulted from domestic violence by the Respondent.
12. That the Respondent engage in personal or family counseling; substance-abuse counseling or treatment, or a program for the rehabilitation of perpetrators of domestic violence, or a combination of these.
13. That the Respondent be prohibited from consuming controlled substances.

Section 8. Dissolving or Modifying Ex Parte or Protective Orders

If any of the Parties wishes to dismiss or change an existing an Ex Parte or Protective Order in any way, he or she must file a Petition to use the Tribal Court form specifically requesting the change. The Tribal Court shall then schedule a hearing only the Court finds that the request has merit. If the Court chooses to hold a hearing to consider the dissolution or modification, it shall do so within 5 business days for an Ex Parte Order and within 10 business days for a Protective Order, with reasonable Notification of the Parties.

Section 9. Violation of an Ex Parte or Protective Order

If the Respondent violates any part of an Ex Parte or Protective Order, he or she shall be charged with contempt of court and subject to appropriate penalties available to the Northway Tribal Court, and may also be prosecuted through the Alaska State Court judicial system.

Section 10. Rights of Victims of Domestic Violence

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

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

Section 11. Rights of Respondents

Respondents shall have the right to due process in the Northway Tribal Court, including the right to be notified of hearings, to speak at hearings, to call and cross examine witnesses, and for all judges hearing the case to be fair and impartial. Ex Parte Orders may be issued without Notice and opportunity to be heard only in urgent emergency circumstances, and shall be temporary for up to 20 days until a hearing with Notice and opportunity to be heard is provided to the Respondent.

CHAPTER 9

MARRIAGES

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Section 1. Tribal Policy

It is the policy of the Northway Tribe to uphold the validity of marriages whenever possible. The Tribal Court shall recognize the validity of any marriage performed under the law of the jurisdiction where it was performed.

Section 2. Procedure for Tribal Marriages

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

1. Both Parties must be at least 18 years of age, or provide evidence of written consent by their parents or legal guardians. If there are two parents or legal guardians, both must consent if their child is under 18.
2. A filing fee shall be paid to the Northway Tribal Court, or the Court may waive the fee upon a finding that both Parties are destitute.
3. Both Parties must attest that they are not currently married.
4. Marriages conducted by the Northway Tribal Court are a privilege and not a right. The Court shall have discretion to decline to perform a marriage for any reason, including if the Tribal Court finds that the marriage is inconsistent with the custom law of the Northway Tribe.

5. Following the marriage ceremony in the presence of at least 2 attending witnesses, the Court shall issue a marriage license.

6. The Tribal Court Clerk shall keep a public record of all marriage licenses and certificates issued.

CHAPTER 10
DIVORCES AND ANNULMENTS

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Section 1. Divorces

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

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

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

Section 2. Annulments

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

1. The marriage was the result of fraud or duress.

2. One of the Parties was of unsound mind at the time of the marriage.
3. There was failure to consummate the marriage.
4. The marriage violated any applicable written law or any unwritten custom law of the Northway Tribe.

CHAPTER 11

NAME CHANGES

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Section 1. Order of Name Change

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

CHAPTER 12

Protection for the Elders and Vulnerable Adults of the Northway Tribe

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Section 1. Policy, Purpose, and Enforcement

A. Policy: It is the traditional way of the Northway Tribe to honor and respect the Tribal Elders. The Elders of the Northway Tribe are valuable resources as they are our custodians of tribal history, culture and tradition.

Thus, it is in the best interest of and serves the welfare of the Northway Tribe to protect tribal Elders. It is also in the best interest of the Tribe to protect vulnerable tribal members.

B. Purpose: The purpose of this Code is to protect Elders and vulnerable adults within the jurisdiction of the Northway Tribe from abuse as defined in this Code. This Code shall be liberally interpreted in order to achieve its purpose. This Code provides for:

1. Reporting abuse or neglect to the Tribal Court;
2. Receiving reports of and investigating suspected abuse or neglect;
3. Delivering Elder protection services and protection services to any other vulnerable adult.

C. Enforcement: The Northway Tribal Court shall be the primary enforcer of this Code, provided that the Northway Tribal Court may enter into agreements with other courts of competent jurisdiction for enforcement when circumstances warrant such cooperation.

Section 2. Application of this Code

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

Section 3. Definitions

In this Code the following words shall have these meanings:

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

“Elder” Is a senior citizen of the Northway Tribe who is recognized as such by the Northway Tribe

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

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

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

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

“Retaliation” is threatening a reporter of Elder abuse or the reporter’s family in any way, causing bodily harm to the reporter or the reporter’s family, causing the reporter or any of the reporter’s family to be reprimanded by an employer, terminated from a job, suspended from general assistance, or damaging the reporter’s or the reporter’s family’s real or personal property in any way.

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

Section 4. Duty to Report Abuse of an Elder

Failure to report cases of suspected abuse or neglect of an Elder or vulnerable adult is a violation against the Northway Tribe and subject to fine under Section 6 of this Chapter. The following people are required to report cases of suspected abuse or neglect of an Elder to the Northway Tribal Court.

1. The Elder’s family or caretaker.
2. Any tribal employee including the Tribal Administrator and Tribal Family Youth Specialist and Village Public Safety Officer.

3. Any tribal elected official, Council member, or Court Judge.
4. Any employee of a tribally owned business, even if not managed by the Tribe.
5. The Village Health Aide.
6. Any medical doctor or dentist, nurse, physicians assistant, human services worker, or Elder service provider.
7. Any person or agency or employee of such agency with a fiduciary duty to the Elder such as a lawyer, accountant, financial institution, property manager, or conservator.
8. Any person who has good reason to suspect that an Elder had been or is being abused or neglected.

Section 5. Immunity for Reporting and Confidentiality

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

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

Any person who is required by this Code to report suspected Elder abuse and fails to do so is subject to a fine of up to \$500.00 if found guilty by the Northway Tribal Court. Any person who makes a report of suspected Elder abuse knowing it to be false is subject to a fine of up to \$500.00 if found guilty by the Northway Tribal Court. If a person retaliates for the reporting of a suspected case of Elder abuse, the Northway Tribal Court may utilize the full range of sentencing options at its discretion.

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

The Northway Tribal Court shall determine whether Elder abuse has occurred. The determination shall be made only after petition of suspected abuse is filed, an investigation takes place, Notice of a hearing is given to all Parties, a Northway Tribal Court hearing is held, and the Court finds proof that is clear and convincing. However, the Court may act in emergency situations to protect the Elder without a petition, investigation, Notice, and hearing when it receives clear and convincing evidence that an Elder is in immediate danger either in writing or orally.

A. Petition: The Northway Tribal Court shall receive reports of Elder abuse by the filing of a petition and shall assign investigators to work with the reporter within 24 hours. Reporters shall file a petition to the Northway Tribal Court containing the following information:

1. The name of the reporter.
2. The name and location of the Elder.
3. The suspected conditions of abuse.

4. Any other facts the petitioner believes will assist the Court.

C. Investigation: Investigators, who are appointed the Northway Tribal Court, shall gather information and file a report with the Court containing the following information:

1. The Elder's name, address or location, telephone number.
2. The name, address or location, telephone number of the person(s) who is suspected of abusing the Elder.
3. The nature and degree of incapacity of the Elder.
4. The name, address or location, telephone number of witnesses.
5. The name, address or location, telephone number of the Elder's caretaker.
6. A description of the acts which are complained of as abusive.
7. Any other information that the investigators believe might be helpful in establishing abuse.

D. Notice and Hearing: Notice and hearing procedures shall be the same for suspected Elder abuse cases as they are for other Northway Tribal Court Cases.

E. Sentencing for Persons who Commit Elder Abuse: The Northway Tribal Court has discretion to impose sentencing on persons who commit

Elder abuse depending on the circumstances using the Options for Sentences in the Northway Tribal Judicial Code, Chapter 2.

Section 8. Elder Protective Services and Placements

- A. Funding of Protective Placements and Services:** Protective services or protective placements shall be provided on either a voluntary or involuntary basis. Such services and placements shall be provided, subject to available funding and resources, and only as determined necessary by the Northway Tribal Court. The Elder, and where appropriate the Elder's family, if able to do so, shall pay for all or part of the costs of services or placement provided to them.
- B. Voluntary Placements and Protective Services:** Protective services or placements may be provided on a voluntary basis by the Northway Tribal Court when requested by any abused Elder and the Court finds the Elder to be in need of such services or placement. The Court shall act on such petitions within 10 days. These services or placements shall be provided in the manner least restrictive to the Elder's liberty and rights consistent with the Elder's welfare and needs. Such services and placements shall be provided, subject to available funding and resources, and only as determined necessary by the Northway Tribal Council. The Council shall develop a written plan for the delivery of Elder protection services.
- C. Involuntary Protective Placement and Services:** Upon an Order of the Northway Tribal Court, involuntary protective services or placement shall be provided to any Elder who is incapacitated or who is abused.

Section 9. Emergencies

A. Emergency Action: The Northway Tribal Court may act without going through the process outlined in Section 7 when emergency circumstances exist. The Court shall issue an emergency protection order authorizing protective services or protective placement on an emergency basis upon receiving clear and convincing evidence that an Elder:

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

B. Maximum length of time for Emergency Order: The emergency protection order shall be issued for a maximum of 20 days and shall specify the emergency services to be provided, by whom the services shall be provided, and any other relevant information to the existing emergency.

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

Section 10. Rights of Elders, Their Families and Caretakers

Elders and family of Elders have the following rights:

1. An Elder, the Elder's family, and caretakers shall be informed about an Elder abuse investigation before it begins unless an emergency exists.

2. An Elder, the Elder's family, or caretaker may refuse to allow an investigator into their home. In this situation, the investigator may seek a warrant for forcible entry before entering the home.
3. The Elder, Elder's family and caretaker have the right to attend any proceeding pertaining to the determination of the Elder's situation.
4. The Elder, Elder's family and caretaker have the right, at their own expense, to seek independent medical, psychological, or psychiatric evaluation of the Elder. These records shall be released to the Northway Tribal Court if the Elder or caretaker wants the Court to consider such evaluations.