

*****AMENDED AND RESTATED ORDINANCE WITH PROPOSED CHANGES*****

The revisions made to the current version of the Child and Family Ordinance by the proposed Amendment and Restatement are illustrated in this document.

KEY:

Additions to the Ordinance = **Underlined**

Deletions to the Ordinance = **~~Strikethrough~~**



**2018-ORD-000
AMENDED AND RESTATED
CHILD AND FAMILY ORDINANCE**

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The Mashpee Wampanoag Tribal Council does ordain as follows:

Section 1. FINDINGS

The Mashpee Wampanoag Tribal Council finds as follows:

- (a) The Mashpee Wampanoag Tribe (the “Tribe”) is a federally-recognized Indian Tribe with a duly-enacted Constitution and the governing body of the Tribe is the Mashpee Wampanoag Tribal Council (the “Tribal Council”) pursuant thereto.
- (b) Article VI, § 2.A. of the Constitution provides that the Tribal Council is empowered to promote and protect the peace, morals, political integrity, economic security and general welfare of the Tribe and its members.
- (c) Article VI, § 2.C. of the Constitution provides that the Tribal Council is empowered to establish procedures and ordinances for the conduct of all Tribal government business operations.
- (d) Article VI, § 2.L. of the Constitution provides that the Tribal Council may establish and enforce all ordinances governing Tribal members.
- (e) The Tribal Council has determined that although the Constitution and 2008-ORD-002, Mashpee Wampanoag Tribal Judiciary, as amended, provide that the Tribe’s jurisdiction extends to the protection of the Tribe’s children, the establishment of a Child and Family Ordinance nonetheless is essential to promote and protect the political integrity, economic security and general welfare of the Tribe.

Section 2. DECLARATION OF GOALS FOR THE CHILD

Kupahqutumumun y8sh keesânutam8ôkanash Nânawânumônât kah wut8ânunônât Kuneechônunônak. Mâseepee Wôpanây Chupan8ôk kukeesânutamwânushômun kuneechônunônak wunayuhe8ôk ôk wah munuhkan8ôsuwak kah weekôtamwak. Wâuheawunuch, kukeesânutamumun y8sh tyâqasuneesh wuchee wamee kuneechônunônak

The Mashpee Wampanoag Tribe aspires to create for each child an environment in which he or she may become a strong and healthy member of the Mashpee community. Specifically, the Tribe will work towards ensuring the following for each child:

- (a) To receive love, attention, and emotional support from the family and from the Mashpee community;
- (b) To live in a home and community free of alcohol and drug abuse;
- (c) To be protected from violence in the home;

- (d) To be protected from abuse, including sexual abuse, and neglect;
- (e) To receive good nutrition, shelter, and health care;
- (f) To receive an education;
- (g) To learn his or her Mashpee heritage, culture, traditions, and history so that he or she knows who they are and where they come from; to learn the names of his or her grandparents and earlier generations, so that he or she learns how the Mashpee community is related;
- (h) To learn what it means to be a member of the Mashpee Wampanoag Tribe and the important role that he or she plays as a seed of the future of the Mashpee Wampanoag Tribe;
- (i) To understand that he or she does not have responsibility for the actions of adults and to be protected against feelings of shame and guilt for those actions;
- (j) To have positive role models and to receive assistance to become a positive role model;
- (k) To learn about his or her responsibilities toward the family and the Mashpee community through the setting of boundaries for appropriate conduct; and
- (l) To receive information regarding the historical trauma suffered by the Mashpee Wampanoag peoples so that he or she can understand how and why our community has changed within a few generations, and how to preserve the Mashpee Wampanoag culture.

Section 3. BEST INTERESTS OF THE CHILD STANDARD

The Tribe shall utilize the best interest of the child standard when making decisions regarding a child in its care and custody. In addition to considering the circumstances of the child, and those of his or her parents, guardian or custodian, as well as considering their capacity to parent, a best interest of the child determination is made by fostering and encouraging the following:

- (a) A child's need for love, nurturing, protection and stability: A child must have a safe and nurturing home environment that offers emotional support and comfort, the basic needs of food, clothing and shelter, reasonable medical care and protection from danger, violence or exposure to harmful conduct including drug or alcohol abuse;
- (b) A child's need for family: A child must have connection to loving family members for guidance and nurturing. Even though not every child has the benefit of family care, nothing can replace the primary role of loving parents and family in a child's life;
- (c) A child's need for identity and development: A child must develop self-identity and awareness of his or her unique role within the larger Mashpee Wampanoag community, including the child's cultural community. This is accomplished through participation in cultural activities, speaking his or her native language, and having opportunities and encouragement to pursue education and enrichment; and
- (d) A child's need for happiness: A child has the potential for happiness if his or her primary needs are met, has opportunities for play and recreation, leisure time as well as other activities the child enjoys, and has possession of toys and other personal items the child considers important.

Section 34. AUTHORITY AND PURPOSE

(a) **Authority.** The authority for this ordinance is found in Article VI, §§ 2.A, 2.C and 2.L of the Mashpee Wampanoag Constitution.

(b) **Purpose.** The purpose of this Ordinance is to accomplish the following objectives:

1. To provide for the welfare, care and protection of children and families within the jurisdiction of the Tribe;
2. To preserve unity of the family;
3. To take such actions in accordance with this Ordinance and applicable other Tribal and federal law that will best serve the ~~spiritual, emotional, mental, and physical welfare~~ best interest of the child and the best interest of the Tribe to prevent the abuse, neglect and abandonment of children;
4. To take such actions as may be necessary and feasible to prevent the abuse, neglect or abandonment of children;
5. To assist with access to a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community-based alternatives;
6. To secure the rights of and ensure fairness to the children, parents, guardians, custodians or other parties who come before the Tribal Court under the provisions of this Ordinance;
7. To ensure that courts of other jurisdictions will be willing to return tribal children to the jurisdiction of the Tribal Court by establishing this Ordinance;
8. To recognize and acknowledge the tribal customs and traditions of the Tribe with regard to child-rearing; and
9. To preserve and strengthen the child's cultural and ethnic identity whenever possible.

Section 45. DEFINITIONS

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

(b) "Abuse" means the infliction of physical, emotional or mental injury on a child, or sexual abuse or sexual exploitation of a child, and shall include failing to maintain reasonable care and

treatment, inflicting verbal or psychological abuse that may result in deep and lasting trauma, or exploiting or overworking a child to such an extent that his or her health, moods or emotional well-being is endangered.

(c) “Active efforts” means using affirmative efforts to plan, provide, locate or refer parent(s) to services designed to:

- a. Prevent the removal of a child from his or her home, (services could include substance abuse counseling, domestic violence services, and assistance in accessing resources for basic living needs);
- b. Reunite a child with his or her parent(s) or custodian(s) after removal (services could include parenting education, substance abuse and after-care services, mental health counseling, and domestic violence services), and
- c. Finalize a permanent placement for a child when he or she is not able to return home.

A finding of active efforts incorporates and necessarily includes a finding that reasonable efforts have been made.

~~(e)~~(d) “Adoption” means the legal creation of a permanent parent-child relationship with someone other than the child’s birth parent(s).

~~(d)~~(e) “Adult” means a person eighteen (18) years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.

(f) ~~(e)~~ “Child” or “Minor” means a person who is less than eighteen (18) years old, or a person who is less than twenty-one (21) years old, and is:

- a. attending an educational or vocational institution, or
- b. participating in a program designed to remove barriers to employment, or
- c. employed at least eighty (80) hours per month, or
- d. incapable of doing any of the above activities due to a medical condition, which incapability is supported by regularly updated information in the case plan of the child.

~~(e)~~(g) “Child Protection Staff” means persons within the Tribal Health and Human Services Department (“THHSD”), as designated by the Director of the THHSD, which includes the ICWA Department which includes the Indian Child and Family Services Department, established to coordinate child protection services. This includes and the persons employed, contracted with, or appointed by such Director the Tribe to deliver services to specific areas for which such ~~employees- persons~~ shall have adequate training and experience such as, but not limited to the ICWA, foster home licensing, family preservation and child welfare.

~~(g)~~ “Child Protection Worker” ~~means a member of Tribal, municipal, or state law enforcement, a member of the staff of the Tribal Human Services Department, including the ICWA Department, or any person who performs the duties and responsibilities of child protection set forth in this Ordinance.~~

(h) “Closed Adoption” means an adoption which is intended to sever all ties between the child and his or her biological family.

(i) “Conservator” means a person appointed by a court of law to supervise a person’s financial affairs.

(j) “Court” or “Tribal Court” means those Tribal Courts as established under Mashpee Tribal law pursuant to the Constitution and 2008-ORD-001, Mashpee Wampanoag Tribal Judiciary, as amended.

(k) “Custodian” means a person, other than a parent or guardian, to whom legal custody of the child has been given.

(l) “Custody” means a legally-determined relationship establishing an adult’s responsibility for the care and protection of a child.

(m) “Domicile” means a person’s permanent home, legal home or main residence. The domicile of a child is generally that of the custodial parent or guardian. Domicile includes the intent to establish a permanent home or where the parent or guardian consider to be their permanent home.

(n) “Emergency Foster Home” means placement with a family and in a residence, both of which have previously met and continue to maintain the licensure requirements ~~under Section 7 of this Ordinance~~, or both of which have previously met and continue to maintain the licensure requirements of a child protection agency of another tribe or a state.

(o) “Expert” means a person recognized by the Tribe or another federally-recognized tribe to have specific knowledge of the Tribe’s culture and customs or experience in the delivery of child and family services to Indians and knowledge of prevailing social and cultural standards and childrearing practices within the Tribe.

~~“Extended Family Member” means a person who has reached the age of eighteen (18) and who is the child’s great-grandparent, grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, stepparent, or other person recognized under tradition as an extended family member.~~

~~(p) “Family Care Commission” has the meaning given in Section 6(g) of this Ordinance.~~

~~(p)~~ (p) “Foster Home” means placement with a family and in a residence, both of which have met the licensure requirements ~~under Section 7 of this Ordinance~~, or both of which have been licensed by a child protection agency of another tribe or a state.

~~(q)~~ (q) “Guardian” means a person appointed by a court of law to take care of a person or the property of another and may include the duties of a Conservator.

~~(s)~~(r) “Guardian Ad Litem” means a person appointed by the court to represent a child’s interests before the Court.

~~(t)~~(s) “ICWA” means the Indian Child Welfare Act, 25 U.S.C. 1901 et seq.

~~(v)~~ “ICWA Department” means the department within the THSD responsible for the implementation of the ICWA and provision of services to Tribal children in need of care and protection.

~~(u)~~(t) “Imminent physical damage or harm” means present or impending risk of serious bodily injury or death that will result in severe harm if safety intervention does not occur.

~~(v)~~(u) “Incompetent” means a person who is for any cause mentally incompetent to take care of ~~themselves~~ his or herself or to manage his or her ~~their~~ property.

~~(w)~~(v) “Indian” means any person who is a member or is eligible to become a member of a federally recognized Indian tribe, band or community, or Alaska Natives, or a person considered by the community to be Indian, including persons recognized in the community as Wampanoag but not enrolled in the Tribe.

~~(x)~~(w) “Indian Custodian” means an Indian person who has custody of a child under tribal, state, or federal law.

~~(y)~~ “Immediate Family Member” means a person who is the child’s parent or sibling.

~~(z)~~ “Kinship” means a Mashpee Tribal individual or family that has either a blood or emotional relationship to a child yet do not meet the definition of immediate or extended family.

~~(aa)~~ “Minor” or “Child” means a person who is less than eighteen (18) years old, or is up to twenty one (21) years, and is attending an educational or vocational institution and is receiving other services and support, or otherwise has not been emancipated by order of a court of competent jurisdiction.

~~(x)~~ ~~(dd)~~ “Neglect” means the failure of the parent, guardian or custodian to provide adequate food, clothing, shelter, medical care, education or supervision for the child’s health and well-being. Neglect shall include abandoned children.

~~(bb)~~(y) “Open Adoption” means the legal creation of a permanent parent-child relationship with someone other than the child’s birth parent(s), but where the biological parents are allowed to maintain a relationship with the child because the adoption is intended not to permanently deprive the child of connections to, or knowledge of, his or her biological family.

~~(ee)~~(z) “Parent” means a natural or adoptive parent but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.

~~(dd)~~(aa) “Placement” means when a child is brought to live in a home other than his or her original home.

~~(ee)~~ “Open Adoption” means the legal creation of a permanent parent-child relationship with someone other than the child’s birth parent(s), but where the biological parents are allowed to maintain a relationship with the child because the adoption is intended not to permanently deprive the child of connections to, or knowledge of, his or her biological family.

~~(ff)~~(bb) “Relative” means a person who has reached the age of eighteen (18) and who is the child’s great-grandparent, grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, stepparent, or other person recognized under tradition as an extended family member or kinship.

~~(hh)~~ “Tribal Court” or “Court” means those Tribal Courts as established under Mashpee Tribal law pursuant to the Constitution and 2008-ORD-001, Mashpee Wampanoag Tribal Judiciary, as amended.

~~(cc)~~ ~~(ii)~~ “Tribal Health and Human Services Department” or “THHSD” means the Tribal Health and Human Services Department of the Mashpee Wampanoag Tribe.

~~(dd)~~ ~~(jj)~~ “Tribe” means the Mashpee Wampanoag Tribe.

~~(ee)~~ ~~(kk)~~ “Ward” means a person over whom or over whose property a guardian is appointed.

Section 64. JURISDICTION, IMPLEMENTATION, AND ENFORCEMENT.

(a) The Mashpee Wampanoag Tribal Court has jurisdiction over cases arising under applicable federal law, the Constitution of the Tribe, this Ordinance, other ordinances and resolutions of the Tribe, and any cases arising under the customs and traditions of the Tribe concerning family and child welfare, including but not limited to proceedings involving child custody, child in need of care/protection, guardianship, termination of parental rights, and adoption of a person of any age.

(b) The Tribal Court is empowered to issue orders on the emergency, temporary, and permanent custody of children within its jurisdiction, including guardianships, adoptions, and open adoptions.

(c) The Tribal Court has the power to decide questions of jurisdiction which may be raised under this Ordinance or raised under other ordinances and concerning family and child welfare.

(d) The Tribal Court is vested with the fullest jurisdiction to protect the children and families of the Tribe, and nothing in this ordinance is intended to limit in any way the Tribal Court's jurisdiction.

(e) The Tribal Court is authorized, pursuant to the Mashpee Wampanoag Constitution, 2008-ORD-002, the Tribal Judiciary Ordinance, as amended ~~from time to time~~, this Ordinance, and all other applicable Tribal and federal law to issue all necessary orders, judgments, warrants, and subpoenas and to compel obedience to same through punishment for contempt or any other lawful mechanism in cases involving the care, protection, or custody of a child.

1. Contempt of Court.

- A. Definition of Contempt. Willful misbehavior by any person which disrupts, obstructs, or otherwise interferes with the conduct of any civil proceeding by the Tribal Court, or which obstructs or interferes with the administration of justice by the Tribal Court, or which constitutes disobedience or resistance to or interference with any lawful summons, subpoena, process, order, rule, decree or command of the Tribal Court shall constitute contempt of court. The willful failure of a party to comply with the terms of a civil judgment directed against him ~~or~~ her with which he ~~or~~ she is able to comply shall be held in civil contempt of the Tribal Court.
- B. Punishment of Contempt. When contempt of ~~the Tribal~~ ~~e~~Court is committed in the presence of a Tribal Judge, it may be punished summarily by that Tribal Judge. In such case, an order shall then be made reciting the facts constituting the contempt, adjudging the person guilty of contempt, and prescribing the punishment for such contempt in accord with this subsection ~~46~~(e)(1). When it appears upon a verified statement filed with the Tribal Court reciting with particularity the alleged acts and/or omissions constituting contempt to the Tribal Court, which contempt may have been committed out of the presence of the Tribal Court, the Tribal Court may issue a summons to the person so charged directing him ~~or~~ her to appear at a time and place designated for a hearing on the matter. If such person served with the summons fails to appear at the time and place so designated, the Tribal Court shall conduct a hearing, and if it finds him ~~or~~ her guilty of contempt, an order shall then be made reciting the facts constituting the contempt, adjudging the person subject to contempt, and prescribing the punishment for such contempt in accord with this subsection ~~46~~(e)(1).
- C. A Tribal Judge may punish for civil contempt by fine not to exceed \$500. A Tribal Judge may punish for criminal contempt by fine not to exceed \$1000.

2. Payment of Fines. If the court finds that a party, individual, or entity has willfully failed to pay a fine, fee, or court cost imposed for contempt of court or for any other reason under this Ordinance or finds that the party, individual, or entity has

intentionally refused to make a good faith effort to obtain the monies required for the payment, the court shall find that the default constitutes contempt and may do the following:

- A. Issue a Writ of Garnishment. The Writ of Garnishment shall state the debtor's name and all relevant identification information, that the Tribal Court is the creditor, all necessary information about the action under which the fee, fine, or court costs were imposed, and the amount owed. The Writ of Garnishment must also include the Tribal Court's determination as to the reasonable amount of money which may be withheld each week from wages earned by but not yet paid to the debtor, which determination may consider the following factors: total income versus amount of the debt; priority of debt in relation to other obligations owed; and needs of the debtor.
- B. If the party, individual, or entity is an employee of the Tribe, the Tribal Court may submit the Writ of Garnishment to the Tribe.
- C. Provided, however, that if the court finds that the default is not willful and that the defendant cannot pay despite sufficient good faith efforts to obtain the monies, the court may take any lawful action including modifying the manner in which the fine, fee or court costs are to be paid or entering any reasonable order that would assure compliance with the order to pay.

(f) Transfers of Jurisdiction to the Tribe. The Tribal Court may accept or decline jurisdiction of cases arising within its jurisdiction under applicable federal law and the constitution and laws of the Tribe, including this Ordinance. Any such decision of the Tribal Court is appealable to the Supreme Court by any parties to the case, including the Tribe through the ~~THHSD-ICWA Department~~, or Tribal Council.

(g) Transfers of Jurisdiction from the Tribe. The Tribal Court may determine, sua sponte or on motion, to transfer a case from the Tribe to another jurisdiction. Such a determination is appealable to the Supreme Court by any parties to the Tribal Court case, including the Tribe through the ~~THHSD-ICWA Department~~, or Tribal Council.

(h) Funding. In keeping with the Tribe's goal of providing for the welfare, care and protection of its children and families, the Tribe shall make every reasonable effort to obtain, facilitate, or provide funding for each child and family subject to this Ordinance.

(k) Policy, and Rulemaking Authority. The THHSD shall have the authority and power to develop and submit to Tribal Council for review and approval or disapproval, of policy, procedure and regulations, including the number of children in foster care pursuant to 42 U.S.C. §471(14). Any amendments to such policy, procedure and regulations shall be approved by Tribal Council.

Section 76. DUTY TO REPORT ABUSE AND NEGLECT.

(a) Duty to Report. Any person who knows, or has reasonable suspicion that a child has been abused, neglected or abandoned, or that actions are being taken or are going to be taken that would reasonably be expected to result in abuse, neglect, or abandonment of a child, shall immediately report the abuse, neglect, abandonment, or actions to the Tribe's Child Protection Staff.

(b) The Child Protection Staff shall coordinate with state and local child protection agencies to ensure proper reporting.

(c) The following persons are mandated to file with Child Protection Staff a written or verbal complaint of suspected abuse, neglect or other conditions indicating that a child is in need of care and protection when they have knowledge of facts indicating that such conditions probably exist:

1. Physician, surgeon dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or other health care provider.
2. Teacher, educational administrator, school nurse, school counselor, instructional aide, teacher's aide, teacher's assistant, tutor, or bus driver employed by any tribal, federal, public, or private school.
3. Any employee of the tribal social services or child welfare, including any attendance or truancy officer of any tribal, federal, public, or private school or home-school program.
4. Child day care worker, Head Start teacher, public assistance worker, worker in a group home or residential or day care facility, social worker, or case worker.
5. Psychiatrist, psychologist, psychological assistant, or a licensed social worker.
6. Counselor such as a marriage, family, or child counselor.
7. Person employed in the mental or behavioral health profession.
8. Law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a public agency who is responsible for enforcing statutes and judicial orders.
9. Protective services worker, or foster parents.
10. Judge, attorney, court counselor, clerk of court, judicial system official or staff providing they conflict themselves out of the case.

(d) Anonymous Reports. Persons not specified in subsection (b) above may remain anonymous.

(e) A person making a report described in paragraph a, above, that is based upon their reasonable belief and which is made in good faith, shall be immune from civil or criminal liability for making that report.

(f) Penalty for Not Reporting.

1. Any person who fails to immediately report such abuse or actions may be fined, not to exceed \$1000, or disciplined under this Ordinance Act by the Court.
2. Any person who supervises or has supervisory authority over a person and inhibits or prevents that person from making the report shall be fined, not to

exceed \$1000, or disciplined under this Ordinance Aet by the Court.

3. Those persons mandated to report a case of known or suspected abuse, neglect or abandonment who knowingly fail to do so or willfully prevent someone else from doing may be subject to a civil cause of action proceeding in the Court.

(g) **Form and Contents of Reports.** The following information shall be included in the written report submitted to the Tribe's Child Protection Staff:

1. Full names and any aliases, social security numbers, addresses, and Tribal affiliation of the child and his/her parent(s), guardian(s), or custodian(s);
2. The child's date of birth;
3. The nature and content of the child's abuse, neglect, or abandonment;
4. Previous abuse, neglect, or abandonment of the child or his/her siblings, if known;
5. The name, age, and address of the person alleged to be responsible for the child's abuse, neglect, or abandonment if known.

(h) Improper Disclosure.

1. The Child Protection Staff shall maintain a confidential file of the reports prepared under this section.
2. Upon request and with the approval of the Director of the THHSD or by order of the Tribal Court, copies of reports of initial investigations may be provided to:
 - (A) The child's parent, guardian, or legal counsel;
 - (B) The reporting person or agency;
 - (C) The appropriate review board;
 - (D) Legal Counsel of the Tribe;
 - (E) A caseworker or social worker assigned to the case;
 - (F) A child welfare agency of another state or tribe for the purpose of assisting that agency in determining whether to approve a prospective foster or adoptive parent, and
 - (G) The Massachusetts child welfare agency or other appropriate agency or state court for the purpose of implementing or enforcing the Intergovernmental Agreement Between the Mashpee Wampanoag Tribe and The Commonwealth of Massachusetts Regarding Child Custody Services and Proceedings.
3. No such report shall be made available to any persons other than those specified in this section without the written and informed consent of the child's parent or guardian or an order of the Tribal Court.
4. It is a misdemeanor offense for any person to permit any information in the files to be released to persons other than those specified in this section. Any person who makes an improper disclosure is subject to such penalties as set forth in the Mashpee Tribal Law and Order ordinance.

(i) Frivolous Reporting. It is a misdemeanor offense to knowingly and willfully file a frivolous report of child abuse or neglect. Any person who files such report is subject to such penalties as set forth in the Mashpee Tribal Law and Order ordinance.

Section 78. CARE AND PROTECTION ~~AND CHILD CUSTODY~~ CASES.

(a) It is a goal of the Tribe to keep a child with his or her parents or custodian and remove a child only in exceptional circumstances.

(b) Standard for Removal of Child. The Tribal Court may order the removal of a child and place the care and responsibility for the child in the THSD only if it finds that:

1. It would be contrary to the best interests of the child for he or she to remain in his or her home, and
2. Abuse, neglect or abandonment of the child exists.

(c) Emergency Removal of a Child

1. Probable Cause Required to Remove. Whenever a Child Protection Staff ~~social services worker~~ or law enforcement officer has probable cause, as established by sworn affidavit, to believe that a child is in immediate danger of serious and imminent physical or emotional harm and that the removal of the child ~~from the child's home residence~~ is necessary to avoid harm, and if the Court is unavailable to issue a custody order, or if the issuance of a custody order would involve a delay that would contribute to the risk of harm to the child, the ~~social services worker~~ Child Protection Staff or law enforcement officer may take the child into temporary protective care.
2. Within three (3) business days, the Court shall conduct a hearing providing notice and all documentation related to the case to the parents, custodians, and interested ~~extended family members~~ relatives. The Court may not continue the hearing beyond three (3) business days unless for good cause shown.
3. At the conclusion of the hearing the Court shall issue an order either returning the child to the custody of his or her parents, custodians, or legal guardians or direct the Child and Protection Staff of the Tribe to file a petition opening a Care and Protection or Child Custody case for the child and provide the THSD with placement and care responsibility for the child.
4. Before the Court may order or continue the removal of the child, it must find that it would contrary to the best interests of the child for the child to remain in the home.

(d) Initiation of Care and Protection and Child Custody Cases

1. Receipt of Report by Child Protection Staff. Upon receipt of a report or receipt of notice from law enforcement that a child is in need of care or protection, the Child Protection Staff shall determine whether further action based on the report is necessary. Such action may include:
 - A. Investigation;
 - B. Provide services to the family;
 - B-C. Request to the Tribal Court to provide protective supervision of the child;
 - C-D. Request to the Tribal Court for a temporary custody order, and/or ;
 - E. When the requirements of section (c)(1) are met, take the child into temporary protective care; and/or

D.F. Where warranted, request to the Tribal Court for the emergency temporary removal of the child.

2. Petition.

- A. A petition alleging abuse, neglect, or abandonment of a minor may be filed by ~~a member of the~~ Child Protection Staff, ~~a member of~~ law enforcement, or the Tribe's legal counsel with the Tribal Court. If the petition is brought by a person other than the Child Protection Staff, in the event the Tribal Court does not immediately reject the petition, the Child Protection Staff shall be the party to prosecute the case in Tribal Court on behalf of the person who originally brought the petition.
- B. The petition must be substantiated by supported allegations or other documentation of the alleged abuse or neglect.

3. Transfer Cases from Other Jurisdictions.

- A. If the Tribal Court receives notification of an intent or request to transfer from a court of another jurisdiction, the Tribal Court should hold a hearing within twenty (20) days of the notification. The purpose of this hearing shall be to determine whether or not to accept jurisdiction over the case. The only party necessary to the hearing in the Tribal Court on whether to accept or deny transfer of jurisdiction is the THHSD. If the Tribal Court accepts jurisdiction, the court order must state that the placement and care and responsibility of the child lies with the THHSD.
- B. If a complaint or petition pertaining to a minor is originally filed in a jurisdiction other than the Tribal Court's jurisdiction, but the Tribal Court has accepted the transfer of the case to the Tribal Court's jurisdiction:
 - i. The Tribal Court shall request copies of all documents in the file of the prior court;
 - ii. The Tribal Court shall adopt, on a temporary basis and as necessary, any orders of the prior court in effect at the time of the transfer;
 - iii. A status-conference hearing shall be had at the earliest available time to ensure continuity of care and protection for the child;
 - iv. Child Protection Staff shall file with the Tribal Court a petition based on the complaint or petition in the transfer case. This petition may adopt, in whole or part, the complaint or petition from the originating case.

(e)(e) **Adjudication of Care and Protection ~~and Child Custody~~ Cases**

1. Commencement of Case.

- A. Upon the filing of a petition, the Court shall docket and open the case.
- B. If the child has already been removed, the Child Protection Staff shall be responsible to ensure that the child is in safe temporary custody consistent with the Tribe's placement preferences.

2. Investigations and Home Studies.

- A. In order for the Court to order the placement of a child in a foster home or facility or a custodian's or guardian's home, that placement must be the subject of an investigation and/or report that demonstrates to the satisfaction of the Court that the placement is a safe, protective home for the child.
- B. The investigation/report may be performed by the Tribe or by a child protection agency of another tribe or a state.
- C. If the investigation/report was performed by a child protection agency of another tribe or a state, the proposed placement must either obtain their full investigation/report record from the originating jurisdiction or sign all necessary releases to obtain the full investigation/report record.
- D. If the proposed placement has had a significant change in circumstances since the time the original investigation/report, including but not limited to change in family composition or physical residence, the court may order that the Tribe provide an update to the investigation/report.
- E. THSD/THSD workers qualified to perform such investigations and home studies may perform same or the Tribe may contract out such services with qualified individuals with training in assessing safe, protective homes for Indian children.

3. Proposed Plan.

- A. The THSD/THSD and Child Protection Staff shall make recommendations to the Court regarding the custody of the child(ren) involved in a Care and Protection Case.
- B. Such proposed plans shall take into account the best interest of the child(ren) and the interest of the Tribe in protecting its children.
- C. Such proposed plans may include recommended services for the parents, custodians, or guardians. Such proposed plans may recommend family reunification; suspension or termination of the parental rights of one or both parents; guardianship; adoption; or a combination thereof. Whenever a proposed plan is first proposed or amended, a hearing shall be required.

4. Hearings.

- A. Immediate-Adjudicatory/Disposition hearing. The Court shall hold a hearing as soon as is practicable and in no event more than thirty (30) days after the filing of the petition. A party may request an additional fifteen (15) days for good cause shown. In every case, the Court's findings must be issued no later than sixty (60) days after the child's initial removal. At this hearing, the Court must:
1. Make a finding of whether abuse or neglect of the child took place, utilizing a preponderance evidence standard;
 2. Determine the placement of the child, and
 3. Make a finding of whether active efforts have been made to keep the child with his or her parent(s).
- The Child Protection Staff shall present its proposed plan concerning reunification (if the child has been removed from his or her parent(s) or custodian), permanency, and custody. The child's parent(s) may challenge the petition as to whether neglect or abuse took place.
- A.B. Status Conference and Review Hearings. The Court shall adequately monitor and guide the case through, but not limited to, status conferences, review hearings and other hearings; provided, however, that in no event where only a temporary custody order has been entered shall a period of six (6) months transpire without the Court holding a review hearing.
- B.C. Permanency Plan Hearing. The Court shall hold a Ppermanency plan hearing within 12 months and every 12 months thereafter until permanency is reached. At this hearing, the Court must Rreview of the THHSD's permanency plan. The Court may approve a change in the plan to modification or termination of parental rights at this hearing but it is not required to do so.
- C.D. Final Hearing. The Court shall make a final determination as to the reunification, permanency, and custody of the child consistent with this ordinance and the laws of the Tribe and in the child's best interests within a reasonable time. The Court may hold additional or subsequent hearings on modification of parental rights, termination of parental rights, adoption and guardianship.

5. Rights of Parties

- A. All parties to a child in need of care and /protection or child custody hearing are entitled to the following rights to the extent allowed under federal and Tribal law:
1. A statement by the Court that the child, parent, guardian, and custodian has the right to legal representation at their expense;
 2. The opportunity to subpoena witnesses;
 3. The opportunity to introduce, examine, and cross-examine witnesses;

4. The opportunity to discover, offer and inspect evidence; and
 5. The opportunity to present arguments and statements.
- B. There is no right to trial by jury for any proceeding under this Ordinance.
 - C. Appeals of decisions of the Mashpee Wampanoag Tribal District Court may be appealed to the appellate court(s) of the Tribe, consistent with the Constitution and Judiciary Ordinance, as amended ~~from time to time~~.
6. Rights of Physical Custodian. Persons who are custodial foster parents, pre-adoptive parents and relatives providing care are entitled to a right to notice of any proceeding held with respect to the child and have the right to be heard.

~~7.6-Service.~~ Every pleading, motion, notice, order, and other paper filed in care and protection and child custody cases shall be served in accordance with the Mashpee Wampanoag District Court Rules of Civil Procedure.

~~7.Involvement of the Family Care Commission. Any party to a care and protection or child custody case may request the involvement of the Family Care Commission; provided, however, that such involvement may only commence so long as no party to the case objects to such involvement. Involvement of the Family Care Commission in care and protection and child custody cases shall be governed by this Ordinance and any other authorizing ordinance, resolution, bylaws, or other laws or regulations of the Family Care Commission.~~

~~(d)(f)~~ Out-of-Home Placement Preferences

1. In the event a child must be removed from his or her parents, custodian(s), or guardian(s), the Tribal Court and Child Protection Staff shall strive to place the child with one of the following foster care or and pre-adoptive placement preferences, provided the placement is the least restrictive setting for the child and with consideration of placing siblings together and in proximity to his or her parents and siblings, when placed apart:
 - A. A Mashpee Tribal member who is the biological father of the child and whose parental rights have been terminated for reasons other than abuse and neglect.
 - ~~B. A member relative of the child's extended family who is not living in the home from which the child was removed.~~
 - ~~C. A person who has a kinship relationship with the child.~~
 - D.B. A Mashpee Tribal member who is the biological father of the child and whose parental rights have been terminated for reasons other than abuse and neglect as to the subject child have not been terminated and are not the subject of an active termination proceeding.
 - C. Any foster home licensed, approved, or specified by the Tribe.

- ~~E.D.~~ _____ An Indian foster home licensed or approved by a child protection agency of another tribe or a state or a private agency licensed by such governmental agencies to make such placements.
- ~~F.E.~~ _____ Non-Indian families who have a relationship with the Mashpee Tribal community.
- ~~G.F.~~ _____ An institution for children approved by the Tribe or operated by an Indian organization which has a program suitable to meet the needs of the Indian child.

2. In the event a child must be removed from his or her parents, custodian(s), or guardian(s), the Tribal Court and Child Protection Staff shall strive to place the child with one of the following adoptive placement preferences, ~~without order of priority:~~
 - A. A Mashpee Tribal member who is the biological father of the child and whose parental rights have been terminated for reasons other than abuse and neglect.
 - B. A ~~member relative~~ of the child's ~~extended family~~ who is not living in the home from which the child was removed.
 - ~~C. A person with a kinship relationship to the child.~~
 - ~~D. A Mashpee Tribal member who is the biological father of the child and whose parental rights as to the subject child have not been terminated and are not the subject of an active termination proceeding have been terminated for reasons other than abuse and neglect.~~
 - ~~E.C.~~ _____ Other members of the Tribe.
 - ~~F.D.~~ _____ Non-Indian families, ~~absent good cause~~ who have a relationship with the Mashpee Tribal community.
 - ~~G.E.~~ _____ Other non-Mashpee Indian families.

3. Departure from the placement preferences may occur only after the Tribal Court has made a determination, based on clear and convincing evidence, that good cause exists to place the Indian child with someone who is not listed in the placement preferences. The Court may not depart from the placement preferences based on the socio-economic status of any placement relative to another placement. A request for anonymity does not relieve the Child Protection Staff of the obligation to comply with the placement preferences.

(e)(g) **Representation**

- A. In any proceeding involving the custody or care and protection of a child before the Tribal Court, all parties, including each child, may be represented by counsel or the Court, in its discretion, may appoint counsel for all or some parties.
- B. The Tribal Court shall make reasonable efforts to ensure that attorneys qualified and interested in participating in child custody and care/protection proceedings may participate. Attorneys participating in a child custody or care and protection case shall be admitted to practice before the Tribal Court and familiar with the laws of the Tribe.

~~(f)~~(h) Confidentiality

1. All hearings under this Ordinance shall be closed to the public; provided that the parties may agree to the presence of members of the public.

~~2.~~ Court records under this Ordinance shall be confidential and shall not be open to inspection to any but the following, except as may be ordered by the Court in the child's best interest:

A. The child;

B. The parent, guardian, or custodian;

A-C. The Tribe's Child Protection Staff, and

B-D. The spokesperson, attorney, or guardian ad litem for any party.

~~i. Members of the Family Care Commission, as applicable.~~

~~3.~~ Case Caption. Cases concerning the custody or care and protection of a child shall be numbered in accordance with the Court's numbering system, and shall be captioned with only the initials of the child(ren) and parents involved, and the Court may determine, in its discretion, to also use initials for other parties to the case. Additionally, only initials shall be used to identify the child(ren), parents, and any other party as determined by the Court throughout all orders of the court.

~~4.2. Family Care Commission. Tribal Council shall establish a Family Care Commission pursuant to and in conformity with Tribal law. The Family Care Commission shall be comprised of elders, professionals, and those with related experience in the Tribal community, as further defined in the ordinance, resolution, or bylaws governing the Commission. The Family Care Commission shall provide community support to Tribal children and families and shall be involved with child care and protection and custody cases to the extent provided for in this Ordinance and as may be provided for in an ordinance or resolution governing the Family Care Commission.~~

Section ~~97~~. LICENSING OF CAREGIVERS AND RESIDENCES

(a) A person applying to be a foster, pre-adoptive or adoptive parent or a guardian must meet the following requirements. The applicant must:

1. Be of good moral character;
2. Be at least 21 years of age and not married to anyone less than 21 years of age;
3. Have a schedule, together with the second parent (if applicable), that would not require that a child of preschool age in their care spend in excess of 50 hours per week in child care or that a child of school age in their care spend in excess of 25 hours per week in child care.
4. Have a stable source of income sufficient to support the household.
5. Have a stable housing history.
6. Possesses the basic ability to read and write in English.
7. Have a working phone with the ability to leave a message.
8. Is a United States citizen or has been granted legal permanent resident status.

9. Be free of any physical, mental, or emotional illness or handicap that would impair his/her ability to provide appropriate care for the child.
10. Have a record that is free of criminal conduct that bears upon his or her ability to assume the responsibilities of caring for the child.
11. Demonstrate the ability to provide a safe, supportive, nurturing, and stable family environment.
12. Demonstrate the ability to respect the child's racial, ethnic, linguistic, cultural, and religious background.
13. Demonstrate the ability to accept and support the child's relationship with his or her parents, siblings, and other family members, unless a court has deemed such relationship harmful to the child.
14. Demonstrate the ability to implement the child's permanency plan with the THSD/THHS.

(b) A person applying to be a foster, pre-adoptive or adoptive parent or a guardian must attend a foster parent/pre-adoptive parent/guardian training program as designated and approved by the THSD/THHS. The THHS may recognize the licensure of a foster, pre-adoptive or adoptive parent or a guardian issued by a federally recognized tribe or state, but it may require supplemental training covering the unique aspects of the Mashpee Wampanoag Tribe.

- (c) An applicant's home must meet the following requirements. The home shall:
1. Be clean, safe, free of obvious fire and other hazards, and of sufficient size to accommodate comfortably and appropriately all members of the household.
 2. Have safe and adequate lighting, ventilation, hot and cold water, plumbing, electricity, and heat.
 3. Be furnished with a refrigerator and cooking stove in safe, working condition.
 4. Have sufficient furniture to allow each child to sleep in a separate bed and have adequate storage space for each child's belongings.
 5. Have smoke and carbon monoxide detectors in working order near the kitchen and bedrooms, provided also, that there should be at least one such detector on each floor of the home, including the basement.
 6. If the home uses well water, the water shall be tested and determined safe.
 7. Any firearm located in the home shall be licensed and registered in accordance with Massachusetts state law, shall be trigger-locked or fully inoperable, and shall be stored without ammunition in a locked area. Ammunition shall be stored in a separate locked area.
 8. Not allow a foster or adoptive child or ward over the age of 1 to share a bedroom with an adult, except if the child has been sharing a bedroom in the home prior to their 18th birthday and one of the children turns age 18.
 9. Not allow a foster or adoptive child or ward over age 4, except for siblings up to age 8, to share a bedroom with a child of the opposite sex.
 10. Not allow more than four foster or adoptive children or ward to reside in the home at any one time; however, the THSD/THHS may make exceptions to accommodate siblings.
 11. If the home has an in-ground or permanent above-ground swimming pool, the pool must be fenced and have a gate with a functioning, child-proof lock.

(d) A comprehensive assessment of the applicant and his/ or her residence shall be performed by the ~~THSD~~THHSD and shall include the following:

1. An interview with each household member as appropriate to his/ or her age and verbal capacity, including an individual interview with each applicant.
2. Home visits.
3. Contacts with personal references supplied by the applicant and other individuals seen by the ~~THSD~~THHSD as useful to the assessment.
4. Contact with a licensed physician who has conducted a current medical examination of the applicant and each household member.
5. Contact with the employer for each employed applicant.
6. Contact with the school for school-age children living in the applicant's home and preschool age children who attend a child care program.
7. Checks of relevant state, national, and tribal registries.
8. Checks of state and national criminal offender databases/registries.
9. A specific assessment of the applicant's ability to meet the special needs of the child.

~~(e) The THSD shall include in its policies and procedures, at a minimum, the requirements contained in Sections 9(a)-(d) and may provide for additional requirements with the approval of the Tribal Council under section 6(k). The Tribal Court, on the recommendation of Child Protection Staff, may provide for non-safety waivers to the requirements contained in Sections 7 (a)-(d) for relatives, upon good cause shown. The Tribal Court, on the recommendation of Child Protection Staff, may order exceptions to the requirements contained in Sections 7(a) (d) upon good cause shown.~~

Section 10. MODIFICATION OF PARENTAL RIGHTS

(a) Timing of Modification of Parental Rights Petition. A modification petition may be brought by the legal custodian of the child no earlier than three (3) months after a removal order issued by the Tribal Court.

(b) Contents and Service of Modification Petition

1. The modification petition shall include the following information:

- (A) The name, place of residence and tribal affiliation of the petitioner;
- (B) The full name, gender, date and place of birth, residence and tribal affiliation of the child;
- (C) The basis for the Court's jurisdiction;
- (D) The relationship of the petitioner to the child, or the fact that no relationship exists;
- (E) The names, addresses, tribal affiliation, and dates of birth of the child's parents;
- (F) The name and address of the person or agency having legal or temporary custody of the child, and
- (G) A summary of facts supporting modification and the grounds on which modification of parental rights is sought under this section.

2. Service. The petition and notice of hearing shall be served on the parents at least thirty (30) days prior to the hearing date and made in accordance with the Mashpee Rules of Civil Procedure.

(c) Hearing on Modification Petition. On the filing of a petition, the Tribal court shall set a time and date for a closed hearing on the petition and must hold a hearing prior to making a modification order.

(d) Grounds for Modification.

1. The Court may order a modification of parental rights if the following conditions have been met:

(A) Custody of the child has been removed from the parent under section 8;

(B) The Court finds based on clear and convincing evidence that the parent is unwilling or unable to provide a home for the child free from jeopardy in a time that is reasonable in light of the child's needs, and

~~(A)~~(C) Modification is in the best interests of the child.

2. Voluntary Modification of Parental Rights. A parent may voluntarily have his or her parental rights modified by appearing before the Tribal Court and knowingly and voluntarily without influence of fraud or duress, executing a written consent.

3. In deciding whether to modify parental rights, the Court shall consider:

(A) The needs of the child;

(B) The child's age;

(C) The child's tribal ties and attachment to relevant persons;

(D) The child's ability to integrate into a home, and

(E) The child's expressed wishes regarding modification.

(f) Effects of Modification Order.

1. An order to modify the relationship between the parent and a child may include, but is not limited to:

(A) A permanent modification of the parental rights of the parent to allow the child to go through a customary adoption;

(B) A permanent modification of the right of the parent to have contact with the child or the implementation of a contact agreement agreed upon by the parties;

(C) If a parent exhibits abusive, harassing or inappropriate behavior towards child, the child's foster parent, the child's adoptive parent and/or the THHSD or other agencies, Restraining a parent from contact the child, the child's foster parent, the child's adoptive parent and/or the THHSD or other agencies possessing information regarding the child;

(D) Ordering that the parent's obligation to pay child support arrearages are terminated, or

- (E) Removing the standing of the parent to appear at future legal proceedings involving the child.
- 2. A copy of the modification order shall be served upon all parties, including the parents.

(g) A modification order of parental rights may be reviewed by the Court at the request of the parents or the THHSD if:

- 1. There is no final permanency order in effect after a period of one (1) year after the entry of the final order modifying parental rights,
- 2. The adoption of the child fails, or
- 3. The adoptive parent is deceased.

Section 11. TERMINATION OF PARENTAL RIGHTS

(a) The Tribe does not support termination of parental rights except in rare cases. When appropriate and in the best interests of a child, modification of parental rights and customary adoption are the preferred permanency plan.

(b) Timing of Termination of Parental Rights Petition.

- 1. A termination of parental rights petition may be brought by the legal custodian of the child no earlier than three (3) months after a removal order issued by the Tribal Court;
- 2. A termination of parental rights petition shall be brought by the legal custodian of the child if the child has been in foster care under the responsibility of the Tribe for fifteen (15) of the most recent twenty-two (22) months, unless:
 - (A) The Child is being cared for by a relative;
 - (B) The THHSD has not provided all the services specified in the case plan;
 - (C) A modification of parental rights petition has been filed as a precursor to an adoption, or
 - (D) The THHSD can otherwise show a compelling reason why determining that filing the petition would be contrary to the best interests of the child;
- 3. A termination of parental rights petition may be brought by the legal custodian of the child within sixty (60) days of a Tribal Court determination that the child has been abandoned, unless:
 - (A) The Child is being cared for by a relative;
 - (B) The THHSD has not provided all the services specified in the case plan;
 - (C) A modification of parental rights petition has been filed as a precursor to an adoption, or
 - (D) The THHSD can otherwise show a compelling reason why determining that filing the petition would be contrary to the best interests of the child;

4. A termination of parental rights petition may be brought by the legal custodian of the child within sixty (60) days of a Tribal Court determination that active efforts to reunify the family is not required because of one of the following aggravating factors:

- (A) The parent has subjected a child for whom the parent is responsible to: rape, gross sexual misconduct, sexual abuse, incest, aggravated assault, kidnapping, promotion of prostitution, abandonment, torture, or chronic treatment that is heinous to the Tribe's culture;
- (B) The parent has refused for six (6) months to comply with treatment required in a reunification plan with regards to the child;
- (C) The parent has been convicted of any of the following crimes and the victim of the crime was a child for whom the parent responsible or the victim was a child who was a member of a household lived in or frequented by the parent: murder, felony murder, manslaughter, aiding, conspiring or soliciting murder or manslaughter, felony assault that results in serious bodily harm or any comparable crime in another jurisdiction; or
- (D) The parental rights of the parent to a sibling have been involuntarily terminated.

(i) Contents of Termination of Parental Rights Petition.

1. The termination petition shall include the following information:

- (A) The name, place of residence and tribal affiliation of the petitioner;
- (B) The full name, gender, date and place of birth, residence and tribal affiliation of the child;
- (C) The basis for the Court's jurisdiction;
- (D) The relationship of the petitioner to the child, or the fact that no relationship exists;
- (E) The names, addresses, tribal affiliation, and dates of birth of the child's parents;
- (F) The name and address of the person or agency having legal or temporary custody of the child, and
- (G) A summary of facts supporting termination and the grounds on which termination of parental rights is sought under this section.

2. Service. The petition and notice of hearing shall be served on the parents at least thirty (30) days prior to the hearing date and made in accordance with the Mashpee Rules of Civil Procedure.

(j) Hearing on Termination Petition. On the filing of a petition, the Tribal Court shall set a time and date for a closed hearing on the petition and must hold a hearing prior to making a termination order.

(k) Grounds for Termination.

1. The Court may order the termination of parental rights when the Tribe has shown by clear and convincing evidence that:

- (A) The parent is unwilling to provide a home for the child free from jeopardy in a time that is reasonable in light of the child's needs;
- (B) Continued contact between the child and his or her parent would be harmful and inherently dangerous to the child;
- (C) It is in the best interests of the child, and
- (D) Modification of parental rights as provided for in section 10 (a)-(g) is not appropriate.

2. In deciding whether to terminate parental rights, the Court shall consider:

- (A) The needs of the child;
- (B) The child's age;
- (C) The child's tribal ties and attachment to relevant persons;
- (D) The child's ability to integrate into a home, and
- (E) The child's expressed wishes regarding modification.

(l) Effects of Termination Order.

- 1. Except as provided in subsection (n), an order terminating parental rights divests the parent and child of all legal rights, powers, privileges, immunities, duties and obligations to each other as parent and child.
- 2. The termination of one parent's rights shall not affect the rights of the other parent.
- 3. Once a termination order is in effect, the parent shall not be entitled to notice of the child's adoption proceedings, nor shall the parent have any right to object to the adoption or participate in the proceedings.
- 4. A copy of the termination order shall be served upon all parties, including the parents.

(m) An order terminating the legal relationship between the parent and minor constitutes a final order for purposes of an appeal.

(n) Child's Continued Right to Benefits. No adjudication modifying or terminating the legal relationship between the parent and child will affect:

- 1. A child's enrollment status and rights as a member of the Mashpee Wampanoag Tribe, or
- 2. A child ability to inherit from the parent with whom they have a biological relationship.

Section 812. GUARDIANSHIP.

(a) A person may become a guardian of a minor or incapacitated person upon appointment by the Court. The guardianship continues until terminated by the Court. By accepting a Court appointment as a guardian, a guardian submits personally to the jurisdiction of the Court.

(b) Classifications: the Court may appoint guardians in the following capacities:

- 1. "General," as a guardian of the person or of the property of the ward or both.
- 2. "Special," as a guardian in a limited capacity as expressly identified by the Court.
- 3. "Kinship," as a guardian who is also a relative of the Child/Ward.

(c) Qualifications of Guardians. To be appointed guardian of a minor or incapacitated person, a person must:

1. Be licensed in accordance with Section ~~97(a) and 97(b)~~ of this Ordinance;
2. Be qualified to administer the financial and personal affairs of the ward in a satisfactory manner;
3. Reside in a residence that has met the licensing standards of the Tribe in accordance with Section ~~79~~(c) of this Ordinance; and
4. Have successfully completed a comprehensive assessment by the ~~THSD~~THHSD in accordance with Section ~~97~~(d):

(d) Additional Qualifications for Kinship Guardians. To be appointed a kinship guardian of a minor, a relative must:

1. Have a close emotional bond with the child and that the child has a close emotional bond with the prospective kinships guardian;
2. Have a strong commitment to permanently caring for the child.

~~(d)~~(e) Application for Guardianship. A person may apply to the Court to be appointed the Guardian of a person, minor, or a person's property. The person making the application to the Court must:

1. Meet the qualifications for guardians, under Section ~~124~~(c) of this Ordinance;
2. Submit written or oral consent satisfactory to the Court from the parent, THHSD, or currently-appointed legal custodian or guardian;
3. Specify the nature and duration of the guardianship sought;
4. Demonstrate the need for the guardianship sought;
5. Identify whether there is objection to the guardianship and, if so, from whom and the nature of the objection.

~~(e)~~(f) The Court or ~~THSD~~THHSD may nominate a guardian. In accepting such a nomination as guardian, the proposed guardian shall meet all requirements for the application for guardianship in Section ~~124~~(d) of this Ordinance; provided that the Court or ~~THSD~~THHSD may assist the proposed guardian in meeting all such requirements.

~~(f)~~(g) The Court may hold hearings in its discretion and as necessary in making a determination on a guardianship. The Court may require expert testimony in its discretion and as necessary at such hearings. The Court may require an investigation, home study, and/or report on the proposed guardian.

~~(g)~~(h) The Court must hold a hearing to order a guardianship; provided, however, that if an emergency exists, the Court may exercise the power of a guardian or appoint a temporary guardian pending a hearing. The appointment of a temporary guardian shall be for a specified period of time and shall not exceed six (6) months.

~~(h)~~(i) The Court shall not order a guardianship over an adult person or an adult person's property where that person objects to the proposed guardianship unless a showing has been made to the Court's satisfaction of the necessity of the guardianship.

~~(i)~~(j) Duties of a Guardian. The duties of a guardian, which shall be identified by the Court in a written order, may include:

1. Provide for the care, protection, and education of the ward, including medical care and financial support;
2. Take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward;
3. Apply any available money of the ward to the ward's current needs for support, care, or education;
4. Conserve any excess money of the ward for the ward's future needs;
5. Report any condition of the ward's estate as required by the Court, but not less than annually;
6. A guardian may receive money payable for the support of the ward under the terms of any benefit and apply it to the support of the ward;
7. Take appropriate action to compel the performance by any person with a duty to support the ward or to pay sums for the welfare of the ward.

~~(j)~~(k) The Court, in its discretion, may require a guardian to be bonded or post bond.

~~(k)~~(l) In ordering a guardianship, the Court must issue a written order that identifies and specifies the following:

1. The legal name, birthdate, and tribal affiliation of the ward;
2. The legal name, address, and tribal affiliation of the guardian(s);
3. The basis of the Court's jurisdiction;
4. The relationship of the guardian to the ward, if applicable;
5. The name and address of the person or agency having immediately prior legal or temporary custody of the ward;
6. The classification of the guardianship (whether it is General or Specific or Kinship);
7. The length of time of the guardianship;
8. The duties of the guardianship;
9. A full description and statement of the value of all property owned, possessed or in which the ward has an interest, if the guardian is to have guardianship of property;
10. Any requirements for status review of the guardianship in the future; and
11. Signatures of the guardians, witnessed by the Court.

(m) In ordering a guardianship of adult person, the Court shall make findings:

1. As to why the guardianship is necessary or convenient, and is the best interest of the adult ward, and

2. As is necessary with regard to the future use and management of the adult ward's property and funds. Such findings may be contained within the final order or may, if of a sensitive nature, constitute a separate order.

(n) In ordering a guardianship of a child, the Court shall make findings:

1. As to why the guardianship is necessary or convenient, and is in the best interest of the ward child and why reunification or adoption is not appropriate.

2. If the child will be separated from siblings, the Court shall make findings as to why this is necessary.

3. As necessary with regard to the future use and management of the childward's property and funds. Such findings may be contained within the final order or may, if of a sensitive nature, constitute a separate order. These findings may be in a separate order from the final written order of the legal guardianship if there is a need to protect sensitive information.

(o) When ordering a kinship guardianship, the Court shall also make a finding that the child was eligible for foster maintenance payments for at least six (6) consecutive months while living in the home of the guardian and that the child at least fourteen (14) years of age was consulted on the proposed kinship guardianship.

(p) Kinship Guardian Agreements. The THSD shall include in its policies and procedures the contents of the kinship guardian agreements.

(q) Revocation of Guardianship. The Court may revoke a guardianship for violation of this Ordinance or upon a showing of failure to discharge the duties of the guardianship.

(r) Termination of Guardianship.

1. A guardianship over any minor, adult person, or the property of any person shall not terminate until this Court legally discharges the duty of the guardian through termination or amendment of the guardianship.

2. The guardianship of a minor shall not automatically terminate upon his or her eighteenth (18th) birthday.

3. The Court may terminate a guardianship of a child if that child's parent proves that he or she is fit and able to care for his or her child.

(s) Restoration. A person who has been determined incapacitated by the Court may apply to the Court for a determination of restoration to capacity. A judicial determination of restoration to capacity shall not be made without a hearing on the matter at which, in addition to the presentation of any other witnesses, the ward is examined by the Court.

Section 913. ADOPTION.

(a) The Court may order the adoption or open adoption of a minor upon application by the proposed adoptive parent(s). By petitioning the Court to adopt, proposed adoptive parent submits personally to the jurisdiction of the Court.

(b) Qualifications of Proposed Adoptive Parents. To be appointed the adoptive parent of a child, a person must:

1. Be licensed in accordance with Section ~~97(a) and 97(b)~~ of this Ordinance;
2. Be qualified to administer the financial and personal affairs of the ward in a satisfactory manner;
3. Reside in a residence that has met the licensing standards of the Tribe in accordance with Section ~~97~~(c) of this Ordinance and
4. Have successfully completed a comprehensive assessment by the ~~THSD~~THSD in accordance with Section ~~97~~(d).

(c) Application for Adoption. A person may apply to the Court to adopt a minor. The person making the application to the Court must:

1. Meet the qualifications for proposed adoptive parents, under Section ~~139~~(b) of this Ordinance;
2. Submit written or oral consent satisfactory to the Court from the parent or currently-appointed legal guardian;
3. Specify whether an adoption or open adoption is sought;
4. Demonstrate the need for the adoption;
5. Identify whether there is objection to the adoption and, if so, from whom and the nature of the objection.

(d) The Court or ~~THSD~~THSD may nominate proposed adoptive parent(s). In accepting such a nomination as proposed adoptive parent(s), the proposed adoptive parent(s) shall meet all requirements for the application for adoption in Section ~~139~~(c) of this Ordinance; provided that the Court or ~~THSD~~THSD may assist the proposed adoptive parent(s) in meeting all such requirements.

(e) The Court may hold hearings in its discretion and as necessary in making a determination on an adoption or open adoption. The Court may require expert testimony in its discretion and as necessary at such hearings. The Court may require an investigation, home study, and/or report on the proposed adoption or open adoption.

(f) The Court must hold a hearing to order an adoption or open adoption.

(g) In ordering an adoption or open adoption, the Court must issue a written order that identifies and specifies the following:

1. The legal name, birthdate, and tribal affiliation of the minor;
2. The legal name, address, and tribal affiliation of the proposed adoptive parent(s);
3. The basis of the Court's jurisdiction;

4. The relationship of the minor to the proposed adoptive parent(s), if applicable;
5. The name and address of the person or agency having immediately prior legal or temporary custody of the minor;
6. The classification of the adoption (whether it is an adoption or open adoption);
7. A full description and statement of the value of all property owned, possessed or in which the minor has an interest;
8. That by the order, a permanent parent-child relationship is being established; and
9. Signature(s) of the adoptive parent(s), witnessed by the Court.

(h) In ordering an adoption or open adoption, the Court shall make findings as to why the adoption or open adoption is in the best interest of the minor. These findings may be in a separate order from the final written order of the adoption or open adoption if there is a need to protect sensitive information. In ordering an adoption or open adoption, the Court may place conditions on the adoption which encourage the adoptive parents to ensure that the child maintains a cultural connection with the Tribe. This may be accomplished by the adoptive parents entering into a Cultural Agreement with the Tribe outlines which cultural events the child would attend.

(i) Any relative of a Mashpee child wishing to adopt the child according to the custom of the Mashpee Wampanoag Tribe shall appear before the Tribal Court with the child to be adopted and all other parties concerned and declare their intentions. The Court, if after examination, finds that the requirements of a customary adoption are met, may authorize such adoption and make a record thereof. All adoptions made by Tribal custom shall be null and void unless they are renewed in the manner as above described.

Section 14. GRANDPARENT'S RIGHTS

(a) The Tribal Court may grant grandparents rights of visitation with their grandchildren with or without petition of the grandparents if it is in the best interests of the grandchildren. Visitation rights may be granted even when the parent is deceased, divorced from the parent with physical custody of the grandchild or when the rights of a parent have been severed.

(b) Costs of Visitation. Any transportation costs or other costs arising from such visitation ordered pursuant to this section must be paid by the grandparent(s) requesting such visitation.

Section 15. PATERNITY

(a) The husband of a child's mother is presumed to be the father of any child born during the marriage.

(b) Rebuttal Presumption of Paternity. A rebuttal presumption of paternity exists where one or more of the following factors are present:

1. The child is born during the marriage of the parties or within 300 days of the termination of the marriage;

2. The child is born to parties who attempted to marry but whose marriage is or could be declared void;
3. The child is born to parties who have married or attempted to marry after the child's birth and the putative father has:
 - (A) Acknowledges paternity in writing;
 - (B) Consented to be named as the father on the child's birth certificate;
or
 - (C) Been ordered to pay child support;
 - (D) The child is born outside of a marriage, and the putative father has signed a written acknowledgement of paternity; or
 - (E) The child is born outside of a marriage, and the putative father or husband has openly held out the child as his natural child.

(c) Children Born Outside of a Marriage.

1. If the paternity of a child who is born outside of marriage comes into question, either the putative father or mother may challenge the presumption of paternity.
2. Rebuttal of the presumption of paternity is not required of all children born outside of marriage; only upon motion of the putative father or the mother.

(d) Acknowledgement of Paternity by Both Mother and Father. A written acknowledgement of paternity by both mother and father of the child must have the same force and effect as a judgment of the court. The acknowledgement must have the following factors:

1. The written acknowledgement signed by the putative father of the child;
2. Acknowledgement accompanied by a sworn waiver of the right to a hearing; and
3. Written affirmation of paternity signed and sworn or affirmed to by the mother of the child and filed with the court.

(e) Paternity Petition

1. Paternity petitions are commenced by filing a complaint alleging that the person named is the father of the child and petitioning the Court to issue an Order of Paternity.
2. Petitions for declaration of paternity may be filed with the Court by the mother of the child or, if the mother does not have legal and/or physical custody, by any other individual who has legal and/or physical custody of the child.
3. A petition may be brought by any person having an interest in the child or by the Tribal Prosecutor in the name of the Mashpee Wampanoag Tribe.
4. The petition must be sworn before a notary public or other official designated to verify signatures.

(f) Service of Process. The defendant to a paternity proceeding must be served with a copy of the petition as provided under the Mashpee Rules of Civil Procedure.

(g) Hearing on Paternity Petition.

1. Where such a response is received, the Court must hold a closed hearing on the petition.

2. The testimony of both the mother and the putative father may be solicited and the Court may receive testimony from any witnesses called by the parties.
3. The Court will have the authority to order the putative father to submit to a DNA test. The Court may receive the results of a DNA test as evidence only if testimony interpreting the results is presented by the individual under whose supervision the test was given.

(h) DNA Tests.

1. In any proceeding in which paternity is an issue, the Court may order, upon motion of any interested party, the following persons to submit to a DNA test:
 - (A) The mother of the child;
 - (B) The child;
 - (C) The putative father of the child, and
 - (D) The husband of the mother.
2. This test shall be administered by a qualified physician or other qualified person designated by the Court.
3. The results of the test shall be admissible in cases where such results establish whether the putative father or husband is the father of the child.
4. In any proceeding in which a question of paternity is an issue, the Court may order DNA tests to be performed, unless a putative father or husband has been excluded by prior DNA tests.
5. The paternity of children who are born outside of marriage may be established by genetic testing, as ordered by the Court upon a motion by a contesting party.
6. Costs of DNA tests must be chargeable against the party making the motion.

(i) Previously Conducted DNA Tests as Part of Tribal Enrollment

1. In a paternity proceeding involving a member of the Tribe who has fulfilled the requirements of the Enrollment Ordinance, 2012-ORD-006, including submitting DNA, the Tribal Court may consider that DNA analysis for purposes of determining paternity. A member of the Tribe who has been served with a request for DNA testing should notify the Court of such previous testing.
2. In a paternity proceeding involving an individual who identifies as part of the Tribe, and has undergone the enrollment process but is not a member of the Tribe, he or she may either:
 - (A) Notify that court that he or she has already submitted DNA under the Enrollment Ordinance, and to retrieve and refer to those during the paternity proceedings; or
 - (B) Submit to a DNA test.
3. If the Court determines that a DNA test performed as part of the Tribe's Enrollment process is pertinent to the petition before it, the Court shall request the results of such test from the Enrollment Committee. The Enrollment Committee shall promptly submit those results the Court ensuring that the information remain confidential.
4. The Court may only consider previously performed DNA tests with the consent of the member.

(j) Judgment and Order of the Court

1. If the putative father is found to be the biological father of the child, the Court must make an Order of Paternity.
2. The Court may order the father of the child to stand charged with the support and maintenance of such, with the assistance of the mother if she is financially able, as the Court finds, in accordance with tribal law.

Section 16. SOVEREIGN IMMUNITY. The sovereign immunity of the Tribe, its officials, employees and agents is in no manner waived by this Ordinance.

Section 17. REPEALER. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed.

Section 18. SEVERABILITY. If any section, subsection, paragraph, sentence, or other portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed to be a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this Ordinance.

Section 19. EFFECTIVE DATE. This Ordinance shall take immediate effect and be enforced from and after its passage and publication according to Tribal law.

CERTIFICATION

We, the undersigned Chairman and Secretary of the Tribal Council of the Mashpee Wampanoag Tribe hereby certify that the Tribal Council is composed of 13 members, of whom _____ constituting a quorum, were present at a regular meeting thereof, duly and regularly called, noticed, convened and held on the ____th day of _____, 2018, and that the foregoing Ordinance was duly adopted by the affirmative vote of _____ members, with _____ opposing, and with _____ not voting.

DATED THIS _____ day of _____, 2018.

Cedric Cromwell, CHAIRMAN
Mashpee Wampanoag Tribal Council

ATTEST:

Anne Marie Askew, SECRETARY
Mashpee Wampanoag Tribe

CERTIFICATION OF POSTING

This is to certify that the Ordinance titled 2018-ORD-000, Amended and Restated Child and Family Ordinance, has been posted in accordance with 2009-ORD-003, Regulating Adoption, Amendment or Repeal of Ordinances and Resolutions, as amended.

DATED this _____ day of October, 2018.

Cedric Cromwell, CHAIRMAN
Mashpee Wampanoag Tribal Council

Anne Marie Askew, SECRETARY
Mashpee Wampanoag Tribal Council