

Title I

*Kwo'liyot'ilo tsixáksí»
t'»axá»wat*

The Quileute Family Code

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CHAPTER 1 BACKGROUND AND LEGAL BASIS

This Title is known as the *Kwo'liyot'ilo tsixáksí» t'»axá»wat* (The Quileute Rule for the Conduct of Families) or the Quileute Family Code (Code). The Code is based upon, and is an evolution of, the *tsixaksti» t'»axá»wat* (the rule of the family) which was an oral code that each family, clan group, kin group and the Tribe as a whole used as a guide in making decisions affecting families. The Code includes provisions regulating all proceedings under this Code: *chi'álik'wáyo-tókwoli tsidá pó'okw* or Minor-in-Need-of-Care (MINOC); *tsidá pó'okw hípaxw k'ísíli* or Youth-at-Risk (YAR); *tsidá baskída* or Juvenile Offenders (JO); *bikk'wáyo-kwo»* or Guardianship; *t'soló'op'ol hídá'is* or Termination of Parental Rights, *has»k'wa* or Adoption, *xwat'síl hixat k'at'sil yalólatyá'as* or Domestic Violence (DV) [Reserved]; and *tsixáksí» t'»axá»wat xi' t»óxwadas* or Elders' Code [Reserved].

§1.1 TRADITIONAL AUTHORITY AND CONSTITUTIONAL AUTHORITY OF THE QUILEUTE TRIBE TO ADOPT THIS CODE

The Quileute Tribe adopts the *Kwo'liyot'ilo tsixáksa» t'»axá»wat*, or the Quileute Family Code, pursuant to the authority vested in the Quileute Tribal Council as follows:

A. Traditional Authority. The *Kwo'liyot'ilo tsixáksí» t'»axá»wat*, or Quileute Family Code, is adopted pursuant to the traditional authority vested in the governing body of the Quileute Tribe, the Quileute Tribal Council, under Quileute custom, based upon the oral code of *tsixaksti» t'»axá»wat* (rule of the family) which recognized the importance of resolving disputes and regulating behavior within the family.

B. Constitutional Authority. The *Kwo'liyot'ilo tsixáksí» t'»axá»wat*, or Quileute Family Code, is adopted pursuant to the authority vested in the Quileute Tribal Council under Article VI of the Constitution and By-Laws of the Quileute Tribe of the Quileute Reservation.

§1.2 PRIOR INCONSISTENT CODES AND ORDINANCES REPEALED

Any and all codes and ordinances of the Quileute Tribal Council that conflict in any way with the provisions of this *Kwo'liyot'ilo tsixáksí» t'»axá»wat*, or Quileute Family Code, are hereby repealed to the extent that they are inconsistent with, or conflict with, or are contrary to the spirit and/or purpose of this Code.

§1.3 C.F.R. NO LONGER APPLICABLE

Any and all provisions of the Code of Federal Regulations, Title 25, Part 11, as presently constituted or hereafter constituted which deal with subjects covered in this *Kwo'liyot'ilo tsixáksí» t'»axá»wat*, or Quileute Family Code, or are otherwise inconsistent with or in conflict with the provisions of this Code or the purpose and/or spirit of this Code are declared to be no longer applicable to the Quileute Indian Reservation.

§1.4 AMENDMENT OF THE KWO'LIYOT'ILO TSIXÁKSÍ» T'»AXÁ»WAT OR QUILEUTE FAMILY CODE

This *Kwo'liyot'ilo tsixáksí» t'»axá»wat*, or Quileute Family Code, may be amended in the manner provided for the adoption of tribal ordinances. Amendments and additions shall become a part of this Code for all purposes and shall be codified and incorporated herein in a manner consistent with the numbering and organization of this Code.

§1.5 SOVEREIGN IMMUNITY

The sovereign immunity of the Quileute Indian Tribe shall in no manner be waived by this Code. The Quileute Tribal Council members, employees, and appointees, and volunteers of the Quileute Indian Tribe, are explicitly protected by the sovereign immunity of the Quileute Indian Tribe. Employees, appointees, and volunteers of the Quileute Indian Tribe include, but are not limited to, the following: the Quileute Indian Child Welfare Office (ICW Office); *lixwa kiyá'al hit'a»akwáli pots'ók* or the Quileute Addictions Program; the Quileute Tribal Temporary Assistance for Needy Families (TANF); Youth and Family Intervention Program; *Wí»wat tsitsxíli t'ót'sa'á xí' cho'ótsk'* (unit which decides who should raise a child) or Quileute Tribal Child Placing Agency; *Kíkit'»atá»il híktiyat tsitsxí»li hác'híkwa chí'al xí' cho'ótsk'* (team of experts in charge of deciding what is best for a child) or Child Protection Team; *bíkk'wáyo chí'áli xí' cho'ótsk' óki» chí' t'ík'alyá'as* or caregivers with whom children are placed; *po'ókwo'lo totopt'siyás* or tribal law enforcement officers; : *pots'ókwo pakítli oki» chí' kwo'liyót'ilo chí' kot* or tribal court personnel; *yachiwí»xw sisá'wa* or head start; senior program staff; and other persons and offices serving youth, elders, and families. No person referred to above shall be liable for the inability or failure to provide services as provided in this Code so long as a good faith effort has been made to comply with all provisions of this Code.

§1.6 QUILEUTE TRIBAL SOVEREIGNTY

The Quileute Tribe asserts its sovereignty to the greatest extent possible, while not inconsistent with tribal or federal law. Any inaction on the part of the Tribe or failure to act in an individual case, including, but not limited to cases in which such inaction may be a

result of lack of tribal financial or human resources, shall not be considered a waiver of the Quileute Tribe's inherent sovereignty over these matters or its sovereign immunity from suit.

§1.7 SEVERABILITY

If any part of this Code or its application to any person or circumstance is held to be invalid, the remainder of this Code or its application to other persons or circumstances is not affected.

§1.8 TIME COMPUTATION

In computing any period of time prescribed or allowed by this Code, or by rules of the court, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or tribal holiday. When the period of time prescribed or allowed is less than 7 days, Saturdays, Sundays and tribal holidays shall not be counted in the computation.

For example, if the Tribe temporarily removes a child from his or her home pursuant to a MINOC proceeding on a Thursday, a shelter care hearing shall be held no later than Tuesday of the following week. In other words, the day of removal does not count in computation, but the day of the hearing does count in computation.

CHAPTER 2 GENERAL PROVISIONS

§2.1 FINDINGS

The Quileute Tribe recognizes that the elders and the young people are the Tribe's most important resources and that their welfare is paramount. Quileute elders are the link of each new generation to many, many hundreds of years of wisdom, survival, and accomplishment. The wisdom of Quileute elders is both the source and the future of all culture and tradition upon which the Tribe relies for its very existence. From time immemorial, the Quileute Tribe has relied on each extended family to protect elders and children. The Tribe must continue to strengthen families and children's cultural and spiritual identity so that children become productive and well-adjusted community members, guided by the wisdom of the Quileute elders. The traditional, cultural, and fundamental rights of children, elders and families subject to the jurisdiction of the Quileute Tribe and/or entitled to the protection of the Quileute Tribe are as follows:

- A. Children, elders, and families have the right to live free of physical, emotional, cultural, financial, and spiritual harm and/or neglect, and sexual abuse or exploitation;
- B. Each child subject to the Tribe's jurisdiction and/or entitled to the Tribe's protection shall be provided the care, respect, and guidance that is by *hác'hikwá chí'ál xí' cho'ótsk'* (caring for the child in the way that is best for it) or is otherwise in the best interest of the child as required by Quileute tradition, customary Quileute child-rearing practices, tribal law, or federal law;
- C. The physical, cultural, financial, and emotional integrity and safety of each child, vulnerable adult, and elder subject to the Tribe's jurisdiction and/or entitled to the Tribe's protection is a fundamental right, balanced with the Tribe's traditional commitment to the preservation and strengthening of families;
- D. The Tribe shall access federal, state, and private programs, as appropriate, to provide necessary services and resources to strengthen the ability of families to meet the needs of their children, vulnerable adults, and elders and ensure safe and stable home environments for children, vulnerable adults and elders;
- E. The Tribe shall make every effort to ensure that all funding, resources, and services intended for the benefit of children, families, and elders are used most appropriately and effectively for their benefit, and that all such use is in full compliance with tribal and federal laws and applicable government-to-government agreements;

F. The Tribe shall fully protect the health, welfare, and financial interests of children, families, and elders and ensure that programs for their benefit are administered with the utmost integrity consistent with Quileute custom and tradition; The Quileute Tribe shall not tolerate any financial misconduct or abuse of funds which would improperly divert resources and services which are intended for the benefit of children, vulnerable adults, elders, and families; and

G. The Quileute Tribe shall continue to pursue and negotiate appropriate cooperative government-to-government relationships and agreements with other tribes, the federal government, the State of Washington or other states, and/or provincial governments in Canada for the benefit of children, elders and families.

§2.2 PURPOSE

This Code shall be interpreted and understood to accomplish the following tribal objectives:

A. To provide for the care and protection of Quileute children, other children domiciled on the Quileute Reservation, and any other children to whom the Quileute Tribe owes an obligation of protection by *hác'hikwá chí'ál xí' cho'ótsk'* (caring for the child in the way that is best for it) or otherwise in the best interest of each child;

B. To provide for the care and protection of elders and vulnerable adults of the Quileute Tribe and other elders and vulnerable adults domiciled on the Quileute Reservation;

C. To protect and promote the cultural identity and pride of Quileute children and other Indian children domiciled on the Quileute Reservation as Native Americans and members of their extended family, their clan and kin groups, and their Tribe;

D. To ensure that all services and programs are managed with due diligence and are managed to a high ethical standard in the best interest of the Quileute Tribe and all children, family, and elders subject to the jurisdiction and entitled to the protection of the Tribe;

E. To provide a straightforward procedure for addressing and resolving conflicts relying on community standards and custom which provide all affected persons a fair and impartial hearing consistent with individual rights, Quileute tradition, and applicable tribal and federal law and government-to-government agreements; and

F. To assert Quileute sovereignty and jurisdiction to the greatest extent permitted under tribal and federal laws relating to Indian children, by:

1) Fully utilizing the Tribe's rights under provisions of the Indian

Child Welfare Act (ICWA) to intervene and/or transfer jurisdiction of child dependency cases filed in outside jurisdictions to protect the traditional, cultural rights of each Indian child entitled to the protection of the Quileute Tribe; and

- 2) Requesting that outside jurisdictions grant full faith and credit to Quileute Tribal Court orders relating to the welfare and interest of Quileute children, families, and elders.

§2.3 MANDATORY REPORTING

A. Mandatory Reporting of Child or Elder Abuse or Neglect.

Any person listed below who has reasonable cause to know or suspect that either a child under the age of 18 or a vulnerable adult or an elder over the age of 50 has been subjected to physical, sexual, emotional, or financial abuse, exploitation, or neglect or any person listed below who has observed the child, vulnerable adult, or elder being subjected to circumstances or conditions which would reasonably result in abuse or neglect shall immediately report or cause a report to be made of such fact to the ICW Office Office, Washington State Child Protective Agency, or the La Push Police Department.

- 1) The following persons are required to report: abuse or neglect as defined in this Code; or circumstances or conditions that would reasonably result in abuse or neglect:
 - a) Physician; physician assistant, or surgeon, including a physician in training;
 - b) Child health associate or community health representative (CHR);
 - c) Any medical professional including, but not limited to dentists;
 - d) Registered nurse or licensed practical nurse;
 - e) Clinic or hospital personnel engaged in the admission, care, or treatment of patients;
 - f) Any official or employee of the Quileute Tribal School, Quileute Head Start, Quileute Daycare, or Quillayute Valley School District;
 - g) Social worker or worker in a family care home or child care center;
 - h) Mental health professional;

- i) Any law enforcement officer;
 - j) Any tribal attorney or spokesperson who is a member of the Quileute Tribal Court Bar or a member of the Washington State Bar Association;
 - k) Any employee (whether hourly, salaried, or contractual) or staff of the Quileute Tribal Court;
 - l) Any member of the Quileute Tribal Council;
 - m) Any employee of the Quileute Human Services Program and/or Quileute Health Services Program; and
 - n) Any other tribal employee, whether hourly, salaried, or contractual, who has regular contact with Indian children or Indian elders through his or her tribal employment.
- 2) In addition to those persons specifically required by this Section to report known or suspected child and/or elder abuse or neglect and circumstances or conditions which might reasonably result or neglect, any other person may report known or suspected child and/or elder abuse or neglect and circumstances or conditions which might reasonably result in child abuse or neglect to the tribal law enforcement agency or the tribal office.

B. Mandatory Reporting of Financial Abuse and Financial Misconduct. Any tribal employee or other person designated as a mandatory reporter under this Code who has reasonable cause to know or suspect that financial abuse or financial misconduct, as defined in Chapter 4 of this Code, has taken place shall immediately report or cause a report to be made to the La Push Police Department and to the tribal prosecutor.

C. Any person who willfully violates the provisions of subsection A(1) and/or B, above, and/or any person who personally commits either financial abuse or financial misconduct, as defined in Chapter 4 of this Code:

- 1) Shall be subject to a civil penalty not to exceed \$5,000;
- 2) Shall be liable for damages proximately caused thereby;
- 3) May be subject to criminal prosecution under the Quileute Law and Order Code; and
- 4) The sole venue for determining whether a person has failed to comply with his or her mandatory reporting obligation under this

Code shall be the Quileute Tribal Court.

D. False Reporting. Any person who: knowingly and maliciously makes a false report of abuse or neglect of a child, vulnerable adult, or an elder; and/or who knowingly and maliciously makes a false report of financial abuse and/or financial misconduct under this section without a reasonable suspicion that such abuse, neglect, or misconduct has taken place:

- 1) Shall be subject to a civil penalty not to exceed \$5,000; and
- 2) Shall be subject to damages as may be determined in a Tribal Court proceeding resulting from any civil suit filed by the injured person;
- 3) May be subject to criminal prosecution under provisions of the Quileute Law and Order Code; and
- 4) The sole venue for determining whether or not an individual has made a "false report" under this section shall be the Quileute Tribal Court.

E. "Good Faith" Reports. Any person who makes a good faith report of abuse or neglect under any of the above subsections upon a reasonable belief that such abuse or neglect has occurred shall not be subject to any criminal or civil action under this Code.

§2.4 COURT PROCEEDINGS PURSUANT TO THE *KWO'LIYOT'ILO TSÍXÁKSÍ» T'»AXÁ»WAT* OR THE QUILEUTE FAMILY CODE

A. The Quileute Family Court shall be structured and operate as follows:

- 1) There is established for the Quileute Tribe a division of the Quileute Tribal Court, which shall be known as the Quileute Family Court.
- 2) The Quileute Family Court shall consist of the Chief Judge of the Quileute Tribal Court as appointed by the Quileute Tribal Council and any pro-tem judges as appointed by the Quileute Tribal Council. Following are preferred judicial qualifications and characteristics for judges sitting in the Quileute Family Court:
 - a) There shall be a preference that any judge presiding in Quileute Family Court shall be Native American familiar with traditional Quileute or similar Native child-rearing practices and traditional Quileute or similar Native family structure, culture, values, and traditions; or
 - b) Any non-Native judge presiding in Quileute Family Court shall have significant familiarity with the Quileute culture,

community, and surrounding areas and some familiarity and understanding of traditional Quileute or similar Native family structure, culture, values, and traditions; and

c) Any non-Native judge must be willing to implement the values implicit in the unique cultural perspective of the Quileute Tribe and the local community.

B. Rights of Parties under this Code

1) Privilege Against Self-Incrimination

a) A child alleged to be a "juvenile offender" shall, at the time of arrest, be advised of the privilege against self-incrimination.

b) A child under the age of 12 may not waive his or her privilege against self-incrimination. Only the child's custodial parent(s) or legal guardian may waive that child's privilege against self-incrimination, and such waiver must be informed, explicit, and in writing. On motion of ICW Office, the tribal prosecutor, a member of the child's family, a spokesperson or attorney representing the child, or upon its own motion, the court may invalidate a child's waiver of his or her privilege against self-incrimination upon a finding that the waiver as approved by the child's parent or legal guardian was given to further the interests of the parent or guardian rather than the interests of the child.

c) A child over the age of 12 may not waive his or her privilege against self-incrimination without first having the ability to consult with his or her parent(s), guardian or custodian, or legal counsel. Any waiver under this subsection must be informed, explicit, and in writing.

d) Any statement made by a child before a valid waiver of the child's right against self-incrimination under this Code may not be used against the child in any proceeding under this Code, in any other proceeding in Quileute Tribal Court, or in any proceeding in a court of any other jurisdiction. Employees and/or agents of the Quileute Tribe are prohibited from providing to any person not employed by the Quileute Tribe any copy of a child's statement that would be inadmissible under this provision.

2) Fingerprinting and Photographs. A juvenile in custody shall not be fingerprinted or photographed for criminal identification purposes except by order of the court or as otherwise required

under federal law. If an order of the court is given, the fingerprints or photographs shall be used only as specified by the court.

3) Right to Retain Counsel. In any proceeding under this Code, the juvenile and the juvenile's parent(s), guardian or custodian shall be advised by the court that the juvenile and the juvenile's parent(s), guardian, or custodian may be represented by counsel at their own expense at all stages of the proceedings.

4) Rights of Parties at Hearings

a) At first appearance before the court, and at each subsequent appearance before the court, any alleged "juvenile offender" and that juvenile's parent(s), guardian, or custodian shall be informed by the court of the following:

i) The allegations against the juvenile and the possible consequences if the allegations in the petition are found to be true;

ii) The right to have a legal representative advise and represent them at their own expense;

iii) The right to subpoena witnesses;

iv) The right to introduce, examine, and cross-examine witnesses;

v) The right to discover, offer, and inspect evidence;

vi) The right to present arguments and statements; and

vii) A party need not be a witness against himself or herself.

b) There is no right to trial by jury in any proceeding under this Code.

5) The Quileute Family Court shall be hear cases regularly at least once a month on a special docket. This docket shall be confidential, and the names of parties shall be identified only by first and last initial and case number. All proceedings under this Code shall be confidential and closed to the public. Extended family members who are not parties to a proceeding under this Code do not have a right to attend such a proceeding and may attend only if no party, including the Tribe, objects. Any extended

family member who is not a party who attends a proceeding pursuant to this section shall sign a confidentiality agreement. Any party's or other person's violation of this confidentiality requirement shall be subject to penalty under the contempt of court provisions of this Code.

§2.5 PLACEMENT OF CHILDREN

A. Preferences. The safety of children is the paramount concern that must guide all placement recommendations and decisions. In placing any child in an out-of-home placement, the Quileute Family Court shall observe the following preferences, in order listed:

- 1) With a member of the child's immediate family who resides within or near the Quileute Reservation;
- 2) With a member of the child's extended family who resides within or near the Quileute Reservation;
- 3) With a member of the child's extended family who resides outside of the Quileute Reservation, so long as the Quileute Tribe has the ability to effectively and regularly monitor the placement;
- 4) An enrolled member or a person eligible for enrollment in the child's tribe or another tribe with which the child is affiliated, who resides on or near the Quileute Reservation;
- 5) An enrolled member or a person eligible for enrollment in the child's tribe or another tribe with which the child is affiliated, who resides outside of the Quileute Reservation, so long as the Quileute Tribe has the ability to effectively and regularly monitor the placement;
- 6) An enrolled member or person eligible for enrollment in any other tribe, preferably in Western Washington, so long as the Quileute Tribe has the ability to reliably monitor the placement;
- 7) With another person who can meet the needs of the child, including any special needs, with whom the child is familiar and who the child views as a safe person, and who will actively foster the child's tribal identity and maintain the child's cultural connection and connection with extended family, as appropriate; or

- 8) With another person who resides within or near the Quileute Reservation who has knowledge of the child's needs, including any special needs, and who will actively foster the child's tribal identity and maintain the child's cultural connection and connection with extended family, as appropriate.

B. Placement Alternatives. Of highest priority is the obligation and ability of the Tribe to adequately and regularly monitor the child's physical safety, emotional well-being, and general welfare. If the above order of placement preference cannot be met, then placement may be made with any person deemed suitable by the Quileute Family Court. However, every effort shall be made to comply with the placement preferences listed in Section 2.5.A.

- 1) The placement preferences shall be observed unless, for logistical or other reasons, the Tribe cannot reliably and regularly monitor the child's physical safety, well-being, and general welfare.

- 2) The placement preferences shall be observed unless the person having priority cannot adequately care for and protect the child, or placing the child with the person having priority may pose a danger to the child.

- 3) Placement of a child with anyone who does not reside within the jurisdiction of the Quileute Indian Tribe shall be contingent on the person's written agreement to accept the jurisdiction of the Quileute Family Court, to not permanently remove the child from the State of Washington without permission from the court or supervising agency, to not allow the child to cross an international boundary, to allow regular welfare checks by ICW Office or other designated monitoring agency, and to cooperate fully with the ICW Office and law enforcement.

§2.6 CONFIDENTIALITY AND MAINTENANCE OF RECORDS

A. Investigative Records. All records and files of investigating and monitoring agencies, including but not limited to LaPush Police Department and ICW Office in any case or investigation regarding a Minor-in-Need-of-Care, Juvenile Offender, Youth at Risk, and vulnerable adult and elder are confidential and shall be kept separate from the records and files of all other cases.

B. Quileute Family Court Proceedings. The Quileute Family Court shall make a record of all hearings under this Code and preserve such record. All court records related to Minor-in-Need-of-Care, Juvenile Offender, Youth at Risk, and vulnerable adult and elder abuse

cases are confidential and shall not be open to inspection to any but the following:

- 1) The child, once he or she reaches the age of 18, upon petition to the Quileute Family Court and a finding by the court that such release is in the child's best interest;
- 2) Any elder subject of any vulnerable adult or elder abuse case under this Code upon petition to the Quileute Family Court and a good cause finding;
- 3) The child's parent(s), guardian, or custodian;
- 4) The child's or elder's counsel or spokesperson upon petition to the Quileute Family Court to make appropriate determinations;
- 5) Law enforcement, juvenile court, and social services personnel directly involved in the handling of the case;
- 6) The tribal prosecutor;
- 7) Any person appointed by the court to represent the best interest of the child or elder as a court appointed advocate;
- 8) Other attorneys or courts of competent jurisdiction, as the court may determine appropriate under exceptional circumstances; and/or
- 9) Any other person by order of the court, upon a showing of extraordinary need.

C. ICW Office. ICW Office files and records are confidential and shall not be released except for statistical purposes as provided in subsection F, below or for necessary review by caseworker, supervisors, or the tribal prosecutor providing legal support to the ICW Office. The Quileute Family Court may order release of ICW Office records for good cause shown after the court has first privately reviewed the documents or information in question to balance a person's need to access records and the relevance of those records to the issues of the case with potential risk to a child's or other person's right to privacy.

D. Other Quileute Department/Agency Records. Any and all records of the Quileute Temporary Assistance to Needy Families (TANF) program, the Quileute New Beginnings Program (domestic violence/sexual assault/stalking), and the Quileute Addictions Program that either disclose or may be used to reveal the identity of an individual who has either contacted any of those programs for

assistance or information, applied for services, or received program services are confidential and shall not be released except under the following conditions:

- 1) Necessary review or casework by program staff or the prosecutor or other tribal attorney providing legal support to the program staff;
- 2) Pursuant to a waiver of confidentiality executed by an individual client of a program after full disclosure of possible consequences;
- 3) Pursuant to an order executed by the Quileute Tribal Court authorizing disclosure of information; or
- 4) Pursuant to requirements imposed by the federal Health Insurance Portability and Accountability Act (HIPAA), other applicable tribal or federal law, government-to-government agreements, and/or pertinent professional licensing requirements.

E. After final adjudication and the appeal process has tolled or otherwise been concluded, upon good cause shown, and to the extent determined appropriate by the Quileute Tribal Court in the sole discretion of the Quileute Tribal Court, the victim of a juvenile offense may petition the court for release of confidential information.

F. Records or statistical information may be released for purposes of legitimate research or study upon order of the court as long as such information does not identify or tend to reveal the identity of any individual upon which it is based.

§2.7 DESTRUCTION OF COURT RECORDS

The Quileute Tribal Court shall destroy the records of any minor under its jurisdiction 5 years after the minor attains the age of 18 or after the date of death, whichever shall come first.

§2.8 DESTRUCTION OF FILES AND RECORDS OF THE QUILEUTE INDIAN CHILD WELFARE (ICW) OFFICE

Paper ICW Office records and files shall be preserved in a locked, secure filing cabinet or other secure storage for a period of time until the child in question reaches the age of 23 or 5 years after the date of death, whichever shall occur earlier; at which time, the ICW Office shall request a court order allowing destruction of those records and files.

Digital ICW Office records and files shall be securely stored and be password protected, with the password in the protection of the

Quileute Human Services director. Upon closure of a case file, all digital files relating to that child shall be archived and retained with the paper ICW Office records and files. All digital files relating to a case shall be included within the request for a court order allowing destruction of records and files relating to that child's case.

§2.9 ETHICAL OBLIGATIONS OF EMPLOYEES OF TRIBAL AGENCIES AND PROGRAMS SERVING CHILDREN, ELDERS, AND FAMILIES

Any employee of Quileute tribal agencies and programs serving children, elders, and families shall maintain the strictest confidentiality of the identity of person(s) receiving services, pursuant to tribal law, including provisions set forth in this Code, and federal law.

§2.10 ETHICAL OBLIGATIONS OF SPOKESPERSONS AND ATTORNEYS APPEARING IN CASES GOVERNED BY THE QUILEUTE FAMILY CODE

Spokespersons or attorneys appearing before the court in any case under this Code shall be subject to strict standards of professionalism and confidentiality to protect the best interests of children, families, and elders who are at their most vulnerable during the course of these proceedings.

A. Every spokesperson or attorney representing a party in proceedings under this Code must first become a member of the Quileute Tribal Court bar and enter a notice of appearance before participating in any proceeding.

B. No spokesperson or attorney may enter a notice of appearance in any proceeding under this Code without first obtaining written consent of the person(s) they are representing.

C. No spokesperson or attorney in any case or proceeding under this Code shall advise or encourage their client(s) to commit any violation of Quileute law nor shall any spokesperson or attorney advise or encourage their client(s) to violate any specific requirement of a Quileute Tribal Court order.

D. No spokesperson or attorney shall communicate or provide information concerning proceedings under this Code cases or proceedings to any person or entity other than the person they are representing, except

- 1) Upon an order of the court allowing for such communication;
- 2) For the purpose of obtaining an opinion from an expert or other professional; or
- 3) For the purpose of case investigation and/or preparation by

examining potential witnesses, but under no circumstances shall a spokesperson or attorney provide any copy of confidential written document(s) pertaining to the case to potential witnesses who are not the originator of the document(s).

E. No spokesperson or attorney may withdraw from representation of a party in a proceeding under this Code without first obtaining a court order permitting such withdrawal. Any spokesperson or attorney whose client has requested that they withdraw from the case must so notify the court and request a court order allowing withdrawal.

F. Any spokesperson or attorney who has entered a notice of appearance in any proceeding under this Code must appear at each scheduled hearing and maintain active communication with their client. Any spokesperson or attorney who, for reasons of emergency, is unable to attend a scheduled hearing, must notify the court clerk at the earliest opportunity and make all efforts to avoid unnecessary delays and expense to all parties and to the court.

G. Any spokesperson or attorney who has entered a notice of appearance in any proceeding under this Code is expected and required to maintain a civil attitude and proper respect to the court, court officials and staff, the proceedings, and all parties, attorneys and spokespersons.

H. Any attorney or spokesperson who violates any of his or her ethical obligations as set forth above shall be subject to a civil penalty of up to \$5,000 and/or other sanction deemed appropriate by the court, including but not limited to the contempt procedures set forth below.

§2.11 CONTEMPT OF COURT – DEFINED

The following acts or omissions by any person constitute contempt of court in any proceeding under this Code.

A. Disorderly, contemptuous, or insolent behavior toward a judge of the Quileute Tribal Court, attempting to impair his or her authority, interrupting the due course of a hearing or other judicial proceeding, being intoxicated in court, or interfering with the duties of any personnel of the Quileute Tribal Court;

B. Disobedience to any lawful judgment, decree, order, subpoena, or other process of the court;

C. A breach of the peace, boisterous conduct, or violent disturbance tending to interrupt the due course of a hearing or other judicial proceeding;

D. Any other unlawful interference with the process or proceedings of the court;

E. Any fraudulent or willful interference with the attendance or testimony of a juror, witness, or party to an action under this Code.

§2.12 CONTEMPT - SUMMARY PUNISHMENT

When contempt is committed in the presence of the court, it may be punished at that time. The Quileute Family Court shall prepare an order identifying the contemptuous acts that occurred, finding the person is guilty of contempt of court, and stating the punishment.

§2.13 CONTEMPT - ORDER TO SHOW CAUSE

When contempt has not been committed in the presence of the court, the facts constituting contempt shall be presented to the court by motion of any party or upon the court's own motion. The court may then order the person to appear to show cause why he or she should not be held in contempt of court.

§2.14 CONTEMPT - POWER OF THE COURT

If the court finds by a preponderance of the evidence that a person has committed contempt, it may:

A. Require the violator to pay a civil penalty not to exceed \$5,000; and

B. Order restitution to any party for loss or injury caused by the contemptuous act or omission.

§2.15 CONTEMPT - IMPRISONMENT UNTIL ACT IS PERFORMED

When the contempt consists of the omission or refusal to perform an act that is in the power of the person to perform, he or she may be imprisoned until he or she has performed it. In such a case, the act must be specified in the order of contempt.

CHAPTER 3 JURISDICTION OF THE QUILEUTE FAMILY COURT

The following jurisdictional provisions of this Code shall be construed liberally.

§3.1 *CHI'ÁLIK'WÁYO-TÓKWOLI TSIDÁ PÓ'OKW* OR MINOR-IN-NEED-OF-CARE (MINOC) AND *TSIDÁ PÓ'OKW HÍPAXW K'ISÍLI* OR YOUTH-AT-RISK (YAR) JURISDICTION

A. Exclusive Jurisdiction. The Quileute Tribe asserts exclusive jurisdiction over: any minor either alleged or determined to be in need of care (MINOC); any court termination of parental rights, adoption, or guardianship; and for any juvenile alleged or determined to be a Youth-at-Risk in the following circumstances:

- 1) Any child who resides on the Quileute Reservation, or is temporarily found on the Quileute Reservation with no other known residence, subject to possible transfer of jurisdiction to another tribe, or possibly to a state court in the case of a non-Native child;
- 2) Any child who is an enrolled member of the Quileute Tribe, eligible for enrollment, or a descendent of a Quileute tribal member, who resides either on the Quileute Reservation or in usual and accustomed areas of the Quileute Tribe pursuant to tribal custom, tribal law, treaty, executive order, or federal law, shall be considered domiciled on the Quileute Reservation;
- 3) Any child who is an enrolled member of the Quileute Tribe, eligible for enrollment, or a descendent of a Quileute tribal member and who has a parent(s), care giver, or sibling(s) who has/have significant and long-standing connections with the Quileute Reservation is considered domiciled on the Quileute Reservation; or
- 4) Any child who is currently in temporary foster, kinship, or relative placement; permanent foster, kinship, or relative placement; guardianship; or adoption under order of the Quileute Tribal Court and/or as a ward of the Quileute Tribe.

B. Transfer Jurisdiction. As appropriate and feasible, the Quileute Tribe shall seek transfer jurisdiction under authority of the Indian Child Welfare Act in any state or tribal court proceeding for the foster care placement of, guardianship, or termination of parental

rights to, an Indian child who is enrolled with the Quileute Tribe, eligible for enrollment with the Quileute Tribe, or otherwise domiciled on the Quileute Reservation pursuant to this Code.

C. Intervention in State or Other Tribal Court Proceedings. As appropriate and permitted under the Indian Child Welfare Act, the Quileute Tribe shall intervene in a court proceeding of any state or any tribe for the foster care placement of, or termination of parent rights to, an Indian child who is enrolled with the Quileute Tribe, eligible for enrollment with the Quileute Tribe, or otherwise domiciled on the Quileute Reservation pursuant to this Code.

§3.2 CIVIL JURISDICTION OVER OTHER JUVENILE ACTIONS

The court has civil jurisdiction over any juvenile domiciled or resident on the Quileute Reservation and any juvenile who has committed an act that occurred within the geographic jurisdiction of the Quileute Tribe.

§3.3 JURISDICTION OVER JUVENILE OFFENDERS

The court has jurisdiction over any Indian juvenile offender who has committed an act within the exterior boundaries of the Quileute Reservation, when such act would constitute a crime under the Quileute Law and Order Code if committed by an adult.

§3.4 JURISDICTION OVER ADULTS UNDER THE QUILEUTE FAMILY CODE

The court has civil jurisdiction over both Indian and non-Indian adults in aid of its powers under this Code to the fullest extent allowed by tribal law and federal law and may make such orders as are necessary and in the best interests of any child in the care and/or custody of such adult(s).

§3.5 JURISDICTIONAL AGREEMENTS

The Tribe, through action of the Quileute Tribal Council, may from time to time, enter into government-to-government agreements regarding issues of concurrent jurisdiction, placement of juveniles, and/or any other jurisdictional agreement that the Tribe determines to be in the best interest of children, elders, other tribal members, the community, and/or otherwise in the best interest of the Quileute Tribe.

CHAPTER 4
***Tsítstxi*» (BASIS FOR INTERPRETING AND GUIDING BEHAVIOR)**
AND *Ali't'ítáxas* (WHAT IT MEANS)
CODE CONSTRUCTION AND DEFINITIONS

§4.1 CONSTRUCTION OR *Tsítstxi*» – “BASIS FOR INTERPRETING AND GUIDING BEHAVIOR”

The Quileute Family Code shall be liberally construed to protect the rights of Quileute parents, as well as the sovereign and traditional rights of the Quileute Tribe to determine the best interests of children, families, and elders subject to the Tribe’s jurisdiction and/or entitled to the Tribe’s protection. The Tribe has a paramount duty to protect the physical safety, financial welfare, and emotional security of the community within the family setting, including children, elders, and other vulnerable adults.

§4.2 DEFINITIONS OR *Ali't'ítáxas*—“WHAT IT MEANS”

A. “Best Interest of the Child” or *hác’hikwá chi’ál xi’ cho’otsk’*
– The Quileute customary child-rearing practice recognizes the critical importance of the obligation of parents, families, and the Tribe to protect children from harm and danger, to meet their basic needs, and to further their cultural identity, safety, welfare, healthy development and security. Therefore, “best interest of the child” or *hác’hikwá chi’ál xi’ cho’otsk’* means that each child must be protected from harm and danger, including exposure to domestic violence and substance abuse, and that each child be provided that care, guidance, and control, preferably within his or her own home, which can best meet his or her essential and basic needs, including their cultural identity, safety, financial welfare, healthy development and security. If it is necessary to remove a child from his or her own home, it is in that child’s best interest for the Tribe to:

- 1) Secure for the child the care, guidance, and control as nearly equivalent as that which the child should have been given by his or her parents to help the child develop into a responsible, well-adjusted adult;
- 2) Address the reasons why the parent was unable to appropriately meet the child’s basic need for care, guidance, and control;
- 3) Improve any conditions or home environment which may have harmed or endangered the child or contributed to his or her delinquency; and
- 4) To protect the peace and security of the tribal community and individual residence from the effects of inadequate parenting or

breakdown of the family structure and from juvenile violence or lawbreaking.

B. "Quileute Grandparent" – is the biological grandparent of any child who (i) is an enrolled Quileute tribal member, (ii) is eligible for enrollment in the Quileute tribe, or (iii) is otherwise under the jurisdiction of the court under Chapter 6 of this Code.

C. "Child Placement Agency" or *Wilwat tsitsxíli t'ót'sa'a' xi' cho'ótsk'* – An agency receiving minors for placement or adoption that is licensed or approved by the Quileute Tribe pursuant to tribal law and/or agreement with the State of Washington.

D. "Child-Protection Team (CPT)" or *Kikit'»at»il híktiyat tsitsxí»li háç'hikwa chí'ál xi' cho'ótsk'* – is a multidisciplinary team consisting, where possible, of a representative of the Quileute Family Court, a representative of the tribal law enforcement agency, a representative of the Quileute Head Start Program, an ICW Office caseworker(s), the director of the Quileute Early Childhood Program, the Quileute Addictions Program counselor, the director of Quileute Human Services, an attorney, a representative of the Quileute Tribal School, and one or more representatives of the lay community. In no event shall an attorney member of the child protection team be appointed as guardian for the child or as counsel for the parents at any subsequent court proceedings, nor shall the CPT be composed of fewer than five persons. The role of the CPT shall be to advise the ICW Office regarding case planning and oversight. The role of the CPT shall be advisory only. The Quileute term is literally defined as a "team of experts in charge of deciding what is best for the child."

E. "Delinquent Act" or *Basi'kwa kida* shall mean any act that would be a crime under Quileute law if committed by an adult, or any act that is defined as an offense if committed by a child. The literal definition of the Quileute term is "a too-much bad/wrong/forbidden action or behavior."

F. "Delinquent Child" or *Bas-kídatli tsidá po'ókw* shall be any juvenile who: commits any offense which would be a crime if committed by an adult under the Quileute Law and Order Code; a child who is uncontrollable by parents or guardians; a child who absents himself from home without just cause or consent; or a child of compulsory school age who fails to attend school; or a child who is exhibits immoral or lascivious conduct. The literal definition of the Quileute term is "a child who acts in a way that community values define as bad, wrong, or forbidden."

G. "Domicile" or *t'ík'al* shall be that location where a person

expresses or indicates his or her intent to establish a permanent home. The final determination of "domicile" shall be in accordance with tribal custom and tradition as set forth below and, if necessary, by the Quileute Tribal Council. The literal definition of the Quileute term is "home." The following is the socially and culturally relevant definition of what constitutes domicile or *t'ik'al*:

1) Significant and long-standing connections with the Quileute Reservation shall serve as a rebuttable presumption that a person intends his or her permanent home to be the Reservation.

2) A child who is an enrolled member of the Quileute Tribe, eligible for enrollment, or a descendent of a Quileute tribal member, and who has a parent(s), care giver, or sibling(s) who has/have significant and long-standing connections with the Quileute Reservation shall be presumed to be domiciled on the Quileute Reservation.

3) In the absence of other factors clearly demonstrating intent to establish a permanent home off the reservation, and so long as there are any connections with the reservation, the domicile of a Quileute minor who is enrolled, eligible for enrollment, or descended from an enrolled Quileute tribal member shall be deemed to be within the reservation.

H. "Drug-Endangered Children" or *hípas basak»áli xi' (chi) cho'otsk' yix bas-kátil* shall mean children who have been exposed to abuse and/or neglect by exposure to illegal use or abuse of controlled substances, or to chemicals and processes involved in manufacturing illegal drugs such as methamphetamine. The literal definition of the Quileute term is "child (ren) who might be harmed by harmful intentioned medicine."

I. "Emotional Abuse" or *hitkwo-tá»it-»ók'wali basak»a-»ilá*. The literal definition of the Quileute term is "sadness-feeling causing harmful intentioned medicine." Emotional abuse includes, but is not limited, to the following conduct by a child's parent, guardian, or custodian:

1) Rejection or refusal to accept the child;

2) Ignoring the child or depriving the child of essential responsiveness, thereby stifling a child's emotional growth and appropriate development;

3) Ridiculing and/or terrorizing the child, including but not limited to verbal assaults creating a climate of fear; bullying the

child; name-calling; destroying the child's possessions; and/or threatening or attacking beloved people or pets;

4) Isolating the child, which includes cutting a child off from normal social experiences, preventing a child from forming friendships, locking a child in or out of the home; and/or inducing a child to leave the home because of excessive partying in the home;

5) Corrupting the child, including, but not limited to teaching a child socially deviant behavior such as rewarding aggression, delinquency, or sexually precocious behavior;

6) Penalizing a child for positive, normal behavior;

7) Discouraging the attachment between care-giver and infant; or

8) Exposing the child to domestic violence in the family, such that the child observes or overhears violence between members of the family and/or the child lives in an atmosphere of severe abusive conflict, creating acute or chronic fear in the child.

J. "Enrolled or Eligible for Enrollment" or *Kwo'liyót'ilo »íchtíháli*. The Quileute term literally means, "having Quileute blood." However, for purposes of this Code, persons are considered enrolled or eligible for enrollment, when under the Quileute Constitution and other applicable law, they are enrolled or eligible for enrollment with the Quileute Tribe or any other federally recognized Indian Tribe.

K. "Exploitation" or *baskída»ka lí»ila*. The Quileute term literally means "behavior wrong or inappropriate to do to each other." Exploitation includes, but is not limited to, the following:

1) Exposing of the perpetrator's genitals, or any other sexual act, if such exposure or sexual act is for the purpose of sexual arousal, or gratification, aggression, degradation, or other similar purpose;

2) Obscene calls, e-mails, text messaging, jokes, peeping, or sexual propositions;

3) Child pornography or sexual positioning for photographs, live internet camera, or any similar purpose;

4) Communicating or distributing photographs of children or vulnerable adults for the purpose of commercial or sexual exploitation under this definition;

5) Forcing or allowing a child to watch or participate in any sexual act or act of sexual violence;

- 6) Forcing a child to watch or participate in any sexual act or sexual violence;
- 7) French kissing, handling genitals, masturbation, mouth to genital contact, or licking any part of the body for sexual gratification or stimulation;
- 8) Oral, anal, or vaginal rape whether digital, using an external object, or by penis;
- 9) Sexual maiming or sexual bondage;
- 10) Pinching or tickling; and/or
- 11) Inappropriate, unwanted or excessive touching.

L. "Extended Family" or *ho'ó»wat*. To the extent consistent with tribal custom, an extended family member suitable for placement of a child is any person who has reached the age of 18 years and who is the Indian child's grandparent, grand aunt or grand uncle, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, step-parent or any other person who is considered a family member under tribal law or custom. Clan or kinship relationship may be considered should closer blood relationship be exhausted before appropriate placement.

M. "Financial Abuse." "Financial abuse" includes, but is not limited to, using TANF funds or other tribal or other government funds or commodities for gambling or to buy goods or services for a person not intended to benefit from the program, or selling food stamps or tribal commodities. "Financial abuse" is defined as follows:

- 1) Diverting a tribal service, incentive, or funds from its intended use of benefiting a child, family, vulnerable adult, or elder to the benefit of another person; or
- 2) Diverting funds or property belonging to a child, vulnerable adult or elder to one's own use or the use of another with no resulting benefit to the owner of the funds or property.

N. "Financial Misconduct." Using false or misleading information to obtain a benefit under a Quileute health, human services, or housing program; or engaging or assisting another in theft, burglary, or otherwise fraudulently converting tribal property or services to one's own use or the use of another. A person is engaging in "financial misconduct" when he or she:

- 1) Obtains or knowingly assists another person in obtaining a benefit under a Quileute health, human services, or housing program, including TANF and LIHEAP (Low Income Housing

Energy Assistance Program), for which that person is not eligible; or

2) Knowingly, and without lawful authority, obtains or assists another in any action resulting in financial gain from a tribal program, agency, or entity; such financial gain including but not limited to services, materials, equipment, and supplies in excess of \$50 for the benefit of either that employee or another individual.

N. "Hearsay Evidence" or *kidót»ili kwokwáskal*. The Quileute term literally means "gossip that one has heard." For purpose of construing this Code, "hearsay evidence" is evidence based upon a description of an occurrence or incident that did not occur in the presence of the person providing the description. The court may evaluate hearsay evidence based upon known facts or other indications of reliability. Based upon its evaluation, the court may allow introduction of hearsay evidence for limited purposes and/or under limited circumstances.

O. "In-Home Dependency" or *hác'hikwá chi'ál xi' cho'ótsk'ta»ákal ót'a chichi bikk'wayali chi' kot*. The Quileute term literally means, "The best interest of the child is to stay at home under supervision of the court." For the purpose of this Code, an "in-home dependency" is a MINOC proceeding in which the court orders placement of the child in his or her own home, with possible requirements, restrictions, or other conditions as part of the Tribe's efforts to reunify a family. A child who is placed in an "in-home dependency," remains a ward of the court until the MINOC proceeding is dismissed.

P. "Juvenile Offender" or *Bas-kídatli tsidá po'ókw t'ochochá'wa topá-tsiya hixat »awít'a»ít'siyo-tsiya* is a minor, between the ages of 10 and 18, who commits a delinquent act.

Q. "Least Restrictive Alternative" or *kwadíkwa chakido'ótkwal*. The Quileute term literally means, "to punish with the smallest punishment." However, for purpose of construing the provisions of this Code, "least restrictive alternative" not only relates to "punishment," but also to other justice-related goals, including efforts of rehabilitation and methods for placing children. This term in the Code directs all tribal agencies providing services to children, families, elders, and vulnerable adults, as well as the court, to select the least drastic method of achieving justice related goal(s), including the provision of treatment and other rehabilitative services. The restrictions placed on the child must be reasonably related to the Tribe's objectives and must be the least restrictive way of achieving

that objective.

R. “Neglect” or í t’ikáskalli labí». Neglect is failure to meet the child’s basic needs. The Quileute term literally means “heedless neglect.” Signs that a child has been neglected include the following:

- 1) A child who is not receiving the food, clothing, shelter, medical care, education, or supervision needed for his or her well-being or development;
- 2) An infant who is failing to thrive;
- 3) A child not adequately dressed for weather;
- 4) A child who is habitually absent from, or tardy for, school;
- 5) A child left with a caregiver who is intoxicated, irresponsible, incapacitated, too young, or otherwise incapable;
- 6) A child who lacks parental control because of the habits or fault of the parent(s) or guardian;
- 7) A child who is doing the work of a parent in running a household because the parent or guardian refuses or fails to act as a parent or forces the child;
- 8) A child exposed to a dangerous situation as a result of the negligence of the parent or guardian;
- 9) A child whose parent(s) or guardian misuse benefits intended for the child, such as selling or squandering food stamps or commodities;
- 10) An unborn or nursing child whose mother is using alcohol or other drugs, to an extent that the fetus or baby may be endangered;
- 11) An unborn child whose mother is not receiving adequate prenatal care;
- 12) A minor who is allowed access to alcohol or other drugs;
- 13) A child who is allowed to be out after curfew;
- 14) A child with untreated head lice or repeated infestations of head lice;
- 15) A child whose parent or caretaker has failed to protect the child from an abusive caregiver, partner, or significant other;
- 16) A child who has been exposed to domestic violence in the home;
- 17) A child whose caretaker is using legal substances to the point

that it affects the caretaker's ability to take care of family or other household responsibilities;

18) A child whose caretaker(s) refuses to assist in efforts to provide treatment for the child for alcoholism, drug addiction, or any physical or emotional problem; and

19) A child who is not receiving adequate dental care.

S. "Parent" or t'ot'sátalli káchtot. The Quileute term literally means "the father/mother who raises one." For purposes of interpreting the provisions of this Code, "parent" includes a biological or adoptive parent but does not include persons whose parental rights have been terminated. It also does not include an unwed father who has not acknowledged or established paternity in one of the following ways: being identified as the father on the youth's birth certificate; by acknowledging paternity to tribal enrollment authorities or to a court where the mother has had notice of such acknowledgment and has not disputed paternity; who is commonly recognized by family and other tribal members as the child's parent under tribal custom; or has been determined as the father through formal paternity proceedings under state or tribal law. "Party" or »opa'áli tí'ya». The Quileute term literally means "a person interested for a reason in what happens." For purpose of interpreting provisions of this Code, "party" means any individual or entity who has an interest in a child's case such that the individual's or entity's rights under the Indian Civil Rights Act could be directly impacted by a court ruling. Parties to an action involving a child under this Code include: the Tribe; the child; the child's parent, guardian or custodian; and any person appointed by the court to represent the best interest of the child, such as a child's advocate. Other than court personnel, only parties and/or their spokespersons or attorneys are allowed in closed juvenile hearings.

T. "Physical Abuse" or K'isílli lí»ila. The Quileute term literally means "action that causes injury to someone." In the context of this Code, "physical abuse" includes, but is not limited to, the following actions:

- 1) Any action by a caregiver, parent, person in a position of authority, or anyone over the age of 14 that results in bruising, welting, abrasion, lesions, burns, broken bones, or other damage to the body, not clearly caused by pure accident;
- 2) Giving a child or elder inappropriate food, drink, or drugs or any act or omission which results in a child suffering from malnutrition/ dehydration;
- 3) Engaging in extreme forms of punishment/ isolation including,

but not limited to, hair pulling, slapping or hitting a child's head, severe shaking, yanking limbs, twisting or pulling a child's or elder's ears;

4) Blocking a child's or elder's airways or in any way hindering a child's or elder's ability to breathe;

5) Exposing a child or elder to toxic substances including, but not limited to, manufacturing or using drugs in the home.

V. "Probable Cause" or *K'wisílli tsixáyíl-kwo*. The Quileute term literally means "a true thing that convinces and makes one believe or agree." For the purpose of interpreting this Code, "probable cause" means those circumstances, facts, or events sufficient to convince a reasonable person that a child has committed or is committing a delinquent act or that a child is a MINOC.

W. "Quileute Reservation" or *Kwo'liyót'ilo t'sik'áti*. For the purpose of interpretation of this Code, the boundaries and jurisdiction of the "Quileute Reservation" shall be, at minimum, those areas set forth in applicable treaties, executive orders, and other government-to-government agreements.

X. "Reasonable Belief." Circumstances, facts, or events sufficient to convince a trained and experienced law enforcement or social services professional that a juvenile has committed or is committing a delinquent act or that a juvenile is a MINOC.

Y. "Sexual Abuse" or *yakaxatilo basak»á-»ilá*. The Quileute term literally means "hurtful actions with regard to having intercourse." For purposes of interpreting provisions of this Code, sexual abuse involves the exploitation of any person for the sexual gratification, sexual arousal, aggression, degradation, or other similar purpose of another person in any case where:

1) The victim is under the age of 18 and the other person occupies a position of trust, power, or control, including a teacher, care giver, counselor, foster parent or sibling, coach, spiritual leader, or youth leader;

2) The victim is under the age of 13 and the other person is any age;

3) The victim is between the ages of 14 and 17 and the other person is at least 24 months older; or

4) The victim is an elder or vulnerable adult and has not consented to the sexual contact or exploitation.

Z. "Shelter Care" or *Liwó'wá chi'alik'wáyo-ti*. Temporary care

in a facility, which is the least restrictive alternative. The Quileute term literally means “temporarily being cared for in a care facility.”

AA. “Support” or *Pí»íl siwáchal*. The Quileute term literally means “enough to get along on.” For the purpose of interpreting the provisions of this Code, “support” means provision of adequate shelter, food, clothing, medical care, and provision of appropriate religious and Quileute cultural training.

BB. “Truant” or *waki» kolhawiski»li tsidá po’ókw*. The Quileute term literally means “a young person who doesn’t attend or skips school.” For the purposes of interpreting the provisions of this Code, a child is considered truant when he or she has failed to meet the school attendance requirements of the Quileute Tribal School.

CHAPTER 5
APPLICABLE TRIBAL, FEDERAL, AND OTHER LAW

§5.1 REQUIREMENT FOR CRIMINAL BACKGROUND INVESTIGATIONS

A. Employment of persons in contact with, or in control of, Indian children or elders shall be in conformance with the provisions of the Indian Child Protection and Family Violence Prevention Act, 25 U.S.C. § 3207, and the provisions for the protection of Indian children listed below. Any supervisor responsible for hiring for any tribal entity shall obtain a criminal background check through the La Push Police Department for tribal employees, whether salaried or contractual, and volunteers for activities sanctioned by the Quileute Tribe under the following circumstances:

- 1) Any employee or volunteer who has regular contact with, or control over, Indian children or elders must submit to a criminal background check; and
- 2) No employee may be hired or volunteer services sanctioned by the Tribe if such employee or volunteer has been found guilty of, or entered a plea of "no contest" to, any felony or two or more misdemeanor offenses under federal, state, or tribal law involving crimes of: violence; sexual assault, molestation, exploitation, indecent liberties, or prostitution; crimes against persons; or offenses committed against children.

B. ICW licensing and/or approval of homes for relative placement, foster care placement, guardianship, or adoptive placement of children under the care of the Quileute Tribe shall be in conformance with all applicable government-to-government agreements and in the best interest of Indian children entitled to the protection of the Quileute Tribe. The ICW Office shall obtain a criminal background check, with any necessary assistance from the La Push Police Department, for any and all homes considered for temporary placement or licensing as a relative, foster care placement, guardianship, or adoptive placement for children. All licensing and placement decisions shall be made in full consideration of the results of criminal background checks and all other evidence relevant to the safety and welfare of children entitled to the protection of the Quileute Tribe. The ICW Office shall adopt appropriate policies and standard procedures and protocols to promulgate this provision.

C. All federal laws applicable to tribes shall be fully enforced under this Code, including the Indian Civil Rights Act (ICRA.), 25 U.S.C. §§ 1301-1303.

D. All ordinances or resolutions that regulate the conduct of,

and relations between, families, children, vulnerable adults, or elders, subsequently passed by the Quileute Tribal Council shall be incorporated into this Code.

CHAPTER 6
CHI'ÁLIK'WÁYO-TÓKWOLI TSIDÁ PÓ'OKW
MINOR-IN-NEED-OF-CARE (MINOC)

The Quileute term, *chi'álik'wáyo-tókwoli tsidá pó'okw*, literally means a "non-adult person needing a care-giver." As necessary to meet the needs and safeguard the well-being of all children entitled to the protection of the Quileute Tribe, the ICW Office may initiate a *chi'álik'wáyo-tókwoli tsidá pó'okw* or Minor-in-Need-of-Care (MINOC) action in any case where a minor falls within the jurisdiction of the Quileute Tribe and meets any of the criteria set forth in Section 6.1, below.

§6.1 CRITERIA FOR A MINOC

Any child who fits any one of the following criteria is in need of the Tribe's intervention and his or her circumstances shall be investigated pursuant to provisions of this Code. For purposes of this Code, a "Minor-in-Need-of-Care" (MINOC) includes, but is not limited to:

- A. A child who has been abandoned or who has no parent or guardian available, willing, and able to support or care for him or her;
- B. A child who has been severely neglected or who has been subjected to a pattern of neglect as defined in this Code;
- C. A child who has been severely emotionally abused or who has been subjected to a pattern of emotional abuse, as defined in this Code;
- D. A child who has been significantly physically abused, or who has been subjected to a pattern of physical abuse, as defined in this Code;
- E. A child who has been sexually abused or exploited, as defined in this Code;
- F. A child who has committed delinquent acts as a result of pressures, guidance, approval, or significant lack of supervision of his or her parents or guardian;
- G. A child who is a significant danger to himself, herself or others, including, but not limited to acts of self-mutilation such as cutting; or
- H. A child who has threatened to commit suicide or is otherwise showing signs of being suicidal.

**§6.2 RESPONSE TO REPORTS OF ABUSE, NEGLECT, OR DRUG-
ENDANGERED CHILDREN**

A. Obligation to Conduct Civil Investigation. The ICW Office shall make a thorough investigation immediately upon receipt of any report of known or suspected child abuse or neglect. The immediate concern of such investigation shall be the protection of the child. The ICW Office shall be responsible for immediately transmitting any report of known or suspected child abuse or neglect to the La Push Police Department and/or the FBI.

- 1) The ICW Office shall arrange for a civil investigation to be conducted by persons trained to conduct either the complete investigation or such parts thereof as may be assigned;
- 2) Each factor investigated and each stage of the ICW Office civil investigation shall be fully documented and all investigatory records shall be kept secure as appropriate;
- 3) The ICW Office civil investigation shall include a risk assessment and consider the totality of the following factors:
 - a) Personal and background information concerning the person making the initial report and any other person(s) with knowledge either substantiating or refuting the report;
 - b) The investigator shall make and keep a record of each person interviewed, his or her relationship with the child, and the substance of the interview;
 - c) The ICW investigator shall make and keep a record of the nature, extent, and alleged cause of the abuse or neglect;
 - d) The ICW investigator shall make and keep a record of the identity of the person allegedly responsible for abuse and/or neglect;
 - e) The ICW investigator shall make and keep a record of the names and conditions of any other children living in the same place;
 - f) The ICW investigator shall make and keep a record of the final determination of the investigation and the bases for that determination;
 - g) The ICW investigator shall make and keep a record of a visit to the child's place of residence or place of custody and to the location of the alleged

abuse or neglect, if such visits are feasible;

h) The ICW investigator shall conduct or ensure that a suitable and appropriate person conducts an interview with, or observes the child, reportedly having been abused or neglected;

i) During the course of the investigation, if the ICW Office reasonably believes abuse or neglect has occurred, it shall immediately offer social services to the child who is the subject of the report and his or her family; and

j) The ICW investigation shall make and keep a record of all other data seemed pertinent.

B. Obligation to Conduct Criminal Investigation.

1) The ICW Office shall immediately refer any report of child abuse or exploitation to the La Push Police Department and, pursuant to tribal and federal law, to the FBI for criminal investigation. The ICW Office shall immediately report any report of child neglect to the La Push Police Department;

2) The La Push Police Department and all other mandatory reporters shall immediately refer any report of child abuse, neglect, or exploitation to the ICW Office for civil investigation;

3) During the course of any criminal jurisdiction, the La Push Police Department shall ensure that the criminal investigation shall include at a minimum:

a) A visit to the child's place of residence or place of custody and to the location of the alleged abuse or neglect, if such visits are feasible;

b) An interview with or observance of the child reportedly having been abused or neglected;

c) An interview of any and all caregivers, custodians, or guardians of the child at the time of the alleged abuse or during the appropriate time frame;

d) An interview with all available witnesses, including children, adult family members, teachers, physicians, and others who may have evidence or observations relevant to the investigation;

e) Collection of any and all physical evidence, including bedding and clothing, which may be relevant to the criminal investigation;

- f) A physical examination of the child, including photographs and diagrams documenting injuries, bruising, etc.;
 - g) If admission to the child's place of residence cannot be obtained for purpose of either civil and/or criminal investigation, the court, upon good cause shown, shall order the responsible person to allow the interview, examination, and investigation; and
 - h) During the course of either civil or criminal investigation, if the ICW Office reasonably believes abuse or neglect has occurred, it shall immediately offer social services to the child who is the subject of the report and his or her family.
- 4) At any time during the course of the civil and/or criminal investigation, after completing a risk assessment, the ICW Office or the La Push Police Department may remove the child(ren) from the home on an emergency basis, if either office forms a reasonable belief that such removal is necessary to ensure the welfare and safety of a child from further abuse, neglect, or other harm. Children who are alleged victims of sexual abuse or other significant physical abuse shall always be removed pending conclusion of the investigation. In such cases involving sexual abuse or other physical abuse:
- a) The child shall be immediately transported for a specialized medical examination relevant to the allegations of abuse;
 - b) A trained person shall interview the child at the earliest opportunity; and
 - c) Police shall ensure collection of all available relevant evidence, including clothing and bedding items, and take photographs of any injuries, both at the time of removal and within 48 hours of removal.
- 3) If the La Push Police Department receives a report of known or suspected child abuse or neglect, an officer shall first attempt to contact the ICW Office in order to refer the case for investigation. If the La Push Police Department is unable to contact the ICW Office, an officer:
- a) Shall make a complete investigation utilizing the ICW risk assessment tool. If, after completing the risk assessment and at any time during the investigation process, the officer has a reasonable belief that the child is a MINOC and that removal from the home is necessary to ensure the child's welfare or safety, the officer may remove the child to a safe home from

a list provided by the ICW Office in accordance with removal procedures set forth in this Code;

b) May request the tribal prosecutor to institute or assist in institution of a MINOC complaint on behalf of the child or other children under the same care; and

c) Shall immediately forward a summary of the results of the investigation plus all relevant documents to the ICW Office and to the tribal prosecutor.

5) The Tribe shall coordinate and cooperate with law enforcement and other tribal, state, or federal agencies as necessary to ensure the protection of children.

§6.3 PICK-UP ORDER

The court may issue a pick-up order in accordance with this Code directing that a minor be taken into protective custody if the court finds there is probable cause to believe the minor is a MINOC.

§6.4 EMERGENCY REMOVAL

Emergency removal of the child into protective custody by the ICW Office or the La Push Police Department shall be subject to the following provisions:

A. Basis for Emergency Removal. A child may be taken into protective custody by the ICW Office or by the La Push Police Department if:

1) Pursuant to Section 6.1, the ICW Office or a tribal police officer has reasonable grounds to believe that the child is a MINOC and that the minor is in imminent danger and that the child's removal is necessary for his welfare and/or safety; or

2) The court has issued a pick-up order pursuant to § 6.3 for the minor based upon an ICW complaint.

B. Notice to be Provided to the Parent and/or Guardian. In all cases of emergency removal of a child into protective custody, the ICW Office or the La Push Police Department shall provide the parent, guardian, and custodian with a notice of temporary removal at the time of removal if the parent, guardian, or custodian is present. If the parent, guardian, or custodian is not present at the time of removal, the ICW Office shall make a reasonable attempt to notify the parent, guardian, and custodian within 12 hours of removal at their residence, place of employment, or other place that the parent, guardian, and custodian is known to regularly frequent. Notice shall include:

- 1) A copy of the complaint;
- 2) Notice of hearing date and location and notice of possible outcomes of the initial hearing;
- 3) Notice of their rights under this Code, including a standard summary informational form briefly explaining the MINOC process; and
- 4) A copy of restraining orders or other ex parte orders.

§6.5 SHELTER CARE HEARING

A shelter care hearing shall occur within 3 days after the Tribe removes a minor into protective custody, unless the court finds that there is good cause to extend the time period.

A. Purpose. The purpose of the shelter care hearing is to determine whether there is probable cause to believe that a child is in need of care.

B. Presence of Parent(s) or Guardian. If the child's parent(s) or guardian is not present at the shelter care hearing, the court shall determine what efforts have been made to notify and to obtain their presence. If it appears that further efforts are likely to produce the parent(s) or guardian, the hearing shall be recessed for a reasonable period of time and the court shall direct continued efforts to obtain their presence. If the parent(s) or guardian is not produced after a reasonable recess, the preliminary hearing shall proceed without delay.

C. Court Complaint. A MINOC proceeding shall be initiated by complaint filed by ICW Office. The tribal prosecutor shall sign the complaint and it shall be served upon the child's parent(s) or guardian as far in advance of the shelter care hearing as may be feasible under the circumstances. The complaint shall contain:

- 1) The basis for the Tribe's assertion of jurisdiction over the minor who is the subject of the complaint;
- 2) Name, age, address, and tribal affiliation of the minor who is the subject of the complaint if known;
- 3) Names, addresses, and tribal affiliation of the parent(s) and/or guardians of the minor who is the subject of the complaint, if known;
- 4) The risk assessment completed by the ICW Office or the La Push Police Department;

5) A concise summary of the factual basis that forms a reasonable belief that the child who is the subject of the complaint is a MINOC, including a list of the facts upon which the allegations are based, including the date, time, and location at which the alleged facts occurred; and

6) A statement that all contents of the complaint are true and correct under penalty of perjury under the laws of the Quileute Tribe.

D. The Court shall make the following findings of fact and conclusions of law at the shelter care hearing:

- 1) Whether the Tribe has jurisdiction over the child;
- 2) The tribal status of the child;
- 3) The tribal status of the parent(s);
- 4) The tribal status of any grandparent(s);
- 5) Whether there is probable cause to believe the child is in need of care;
- 6) The best interest of the child and the Tribe with regard to any action to be taken;
- 7) Whether a child advocate should be appointed for the child;
- 8) Whether continued out-of-home placement is in the best interest; and
- 9) Any other findings and conclusions supported and warranted by evidence considered by the court.

E. Presumption that Minor is in Need of Care. When, after reviewing the facts, it is uncertain whether or not a child is in need of care, the court shall weigh the balance in favor of providing protection for the child.

F. Court Ruling at Shelter Care Hearing. The court shall make one of two possible rulings, supported by its findings of fact and conclusions of law, at the conclusion of this hearing as follows:

- 1) If the court finds that there is not probable cause to believe the minor is in need of care, the complaint shall be dismissed and the child shall be released to the custody of his or her parent(s), or guardian; or
- 2) If the court finds that there is probable cause to believe that the minor is in need of care, it shall consider all evidence, including the MINOC complaint, risk assessment, and

recommendations, as well as all evidence presented by the parents and make an interim dispositional order as follows:

- a) That the child be released to his or her parent(s), guardian in an in-home dependency pending further proceedings;
- b) That the child be placed out-of-home, if the court finds that there is probable cause to believe:
 - i) That out-of-home placement is in the child's best interest as defined in this Code; and
 - ii) The out-of-home placement is the least restrictive alternative as defined in this Code.
- c) Enter any restraining orders necessary to ensure the child's welfare and safety;
- d) Enter orders that the parties keep the court informed as to any changes in their whereabouts and mailing addresses;
- e) Appointing a child advocate, if available and/or necessary, to represent the child's best interest;
- f) Enter any other orders necessary for the protection and well -being of the child and the family as supported by evidence admitted by the court, including but not limited to: mandatory urinalysis testing; maintenance of sobriety during contact with the child; mandatory school attendance; executing waivers for release of information; visitation orders; and regular home inspection;
- g) Enter other orders necessary to ensure provision of either voluntary or mandatory services to parents;
- h) The court may make a particular placement conditional on compliance with any of its orders;
- i) Any interim dispositional order of the court shall remain in effect until a dispositional hearing has been held.
- j) Schedule a fact-finding hearing, which shall occur within 30 days after the shelter care hearing.

§6.6 INFORMAL AGREEMENT

Within 10 days of the shelter care hearing, the parents and the Tribe may come to an informal agreement to resolve the issues in the case. Any informal agreement shall toll the 30-day requirement for setting a fact-finding hearing for the life of the informal agreement. Informal agreements may involve return of the children to an in-home dependency or other possible resolutions, such as an agreed-service plan, which could provide for joint participation of parent and child in a treatment program. Progress under the informal agreement shall be reported to the court at the fact-finding hearing, at which time the court shall review progress and, if parties are still in agreement, the court shall set a review hearing for an appropriate date, duly notifying the parties. If the parties are no longer in agreement, the court shall set a new date within 30 days for a fact-finding hearing.

§6.7 FACT-FINDING HEARING

The Court shall conduct a fact-finding hearing under section B below. The fact-finding hearing has two purposes: first, determining whether a child is a MINOC as defined under this Code, and second, making temporary disposition orders for placement, services, and other orders as appropriate to effectuate the purpose and the provisions of this Code pending the dispositional hearing.

A. MINOC Petition. The ICW Office shall file a MINOC petition with the court and serve a copy on all other parties within 10 days before the fact-finding hearing. A MINOC petition shall include:

- 1) The name, birth date, residence, domicile, and tribal status of the child;
- 2) The name(s), residence(s), and tribal status of the child and of his or her parent, guardian, or custodian;
- 3) A citation to the specific section of this Code that gives the court jurisdiction over the proceeding;
- 4) A detailed statement of facts and reasons that support the allegation that the child is in need of care. However, any complaint or other pleading previously filed with the court may be incorporated by reference into the petition;
- 5) The results of all investigations completed by the ICW Office, the La Push Police Department and/or agencies of the Quileute Tribe or any other jurisdiction which may have information pertinent to this case;
- 6) If the child is in shelter care, the place of shelter care (unless confidential) and the time taken into custody;

- 7) A recommended service plan for parents and child; and
- 8) All contents of the petition shall be attested as being true and correct under penalty of perjury under the laws of the Quileute Tribe.

B. Court Ruling at Fact-Finding Hearing. The court shall make one of two possible rulings at the conclusion of the fact-finding hearing as follows:

1) If the court finds that there is not a preponderance of the evidence to believe the child is a MINOC, the complaint shall be dismissed and the child shall be released to the custody of his or her parent(s) or guardian; or

2) If the court finds, by a preponderance of the evidence, that the child is a MINOC pursuant to the criteria listed in this Code, it shall issue findings of fact and conclusions of law that:

a) Determine whether reasonable efforts have been made to prevent or eliminate the need to remove the child from his or her home or to safely return the child home;

b) Specify the services that have been provided or offered to the child and his or her parent(s) or guardian in order to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child was protected adequately in the home;

c) Support a finding that the child is a MINOC pursuant to the provisions of this Code, and that:

k) There is no parent or guardian available or able to care for the child;

ii) The parent, guardian, or legal custodian is not willing to take custody of the child; or

iii) A preponderance of the evidence supports a finding that there is a manifest danger of physical or emotional damage if the child is not removed from the home, and shall schedule a dispositional hearing to take place no later than 30 days from the date of the fact-finding hearing.

3) Pending the dispositional hearing, the court shall make such interim orders as it deems necessary for the best interest of the child.

§6.8 DISPOSITIONAL HEARING

The court shall conduct a dispositional hearing within 30 days after the fact-finding hearing. The court shall notify the parties in writing of the date of the dispositional hearing.

A. Predispositional Report. The ICW Office shall prepare a predispositional report describing all reasonable and appropriate alternatives and shall file the report within 20 days after the fact-finding hearing. The report shall contain a proposed family reunification plan. The report shall explain the necessity for the proposed plan and its benefits to the child and the child's parent(s) or guardian. If placement with someone other than the child's parent(s) or guardian is recommended, the report shall contain specific reasons for not recommending placement of the child with the child's parent(s) or guardian. The report shall also describe the efforts made by the ICW Office to avoid an out-of-home placement.

B. Service of Predispositional Report. The ICW Office shall mail or personally deliver the predispositional report to the court and all parties to the proceeding at least 10 days before the dispositional hearing.

C. Additional Reports. Any party to a MINOC action may file a predispositional report, which shall include his or her recommendations for consideration by the court.

D. Purpose of Dispositional Hearing. A dispositional hearing shall be held to decide how to best meet the needs of the child and assist his or her family. The court shall hear testimony, consider all proposed family preservation plans filed, and may seek recommendations from professionals experienced in providing services to children. All parties shall be given an opportunity to contest the facts and conclusions presented in each proposed plan.

1) In determining an appropriate disposition, the court shall provide all parties the opportunity to be heard. Any child over the age of eight shall have the right to meet with the judge in private to present his or her point of view and opinions, unless the court determines that such meeting is not in the child's best interest. In making its determination the court shall consider all of the following applicable factors:

- a) Special physical or emotional needs of the child;
- b) Social, cultural, or religious traditions of the child, his or her family, or the child's tribe;

- c) Availability of resources within the child's extended family;
- d) The child's preference for placement depending upon the child's age, emotional maturity and the basis for his or her preference;
- e) The recommendation of the ICW Office and any other person with an interest in the child or specialized knowledge of the child;
- f) Recommendations of the social service agency of the child's tribe;
- g) Recommendations of professionals experienced in providing services to children;
- h) Whether the child is eligible for enrollment in the Quileute or any other Indian tribe; the parent's opinion as to whether the child should be enrolled; and whether it is in the child's best interest to be enrolled; and
- i) Other factors calculated to meet the needs of the individual child and the purposes of this chapter.

2) In fashioning its dispositional order, the court shall include the following findings of fact and conclusions of law determining whether the parents have accessed services as previously offered and/or ordered, complied with any court-ordered requirements, and/or taken other steps necessary to avoid continued out-of-home placement; and

- a) Setting forth efforts the parents have made to access all offered and/or provided services and all efforts to comply with court orders;
- b) Detailing reasons for any failure by parents to fully access services and/or any obstacles which may have resulted in parents' failure to fully comply with previous court orders;
- c) Setting forth efforts of children to access services and any needs or issues regarding the children which may have developed since the previous hearing;
- d) Determining whether parent(s) and/or the minor have accessed and successfully completed all court-ordered services and complied with all court-ordered requirements,

to determine whether dismissal of the petition is appropriate; and

e) Developing a plan to return the child to his or her home and assessing whether, and under what circumstances, continued court intervention may be necessary under an in-home dependency; or

f) Continue permanency planning pending the up-coming review hearing. Such permanency planning pending review will have two prongs: first, to support continued efforts to reunify the family; and second, to ensure that other permanency options remain open in the event that reunification is not possible in the long term. Permanency planning activities set forth in the dispositional order may include offering or ordering additional services to the parents and/or children, ensuring continued compliance with previous court orders, and/or ordering compliance with new provisions; and providing for such additional period of time necessary for evaluating the effectiveness of the current plan and to assess the need for any additional services or other activities; and/or

g) Determining any other disposition as may be in the best interest of the child, his or her family, and the Tribe, including, but not limited to the issue of whether the ICW Office should be directed to submit an application to enroll the child in the Quileute Tribe or any other tribe.

3) In the dispositional order the court shall include the family preservation plan for the protection and well-being of the child which shall:

a) Provide that the child shall remain with his or her parent(s), guardian, or custodian subject to any such limitations and conditions the court may order; or

b) Provide that the child shall reside in an out-of-home placement subject to the placement preferences listed in Section 2.5.A. Before placing the child out of the home, the court must determine that reasonable efforts have been made to avoid the out-of-home placement. An out-of-home placement may also be subject to any limitations and conditions the court may prescribe; and

c) Develop a written permanency plan of care directed towards securing a safe, stable, and permanent home for the child as soon as possible. The permanency

planning process continues until a permanency planning goal is achieved or dependency is dismissed. The planning process shall include efforts to return the child to the parents' home. Permanency planning shall identify one of the following outcomes as the primary goal and may also identify additional goals:

- i) Return of the child to the home of the child's parent, guardian, or legal custodian;
- ii) Guardianship;
- iii) Permanent long-term relative or foster care;
- iv) Customary adoption; or
- v) Participation in a responsible living skills program with the goal of independent living if the child is 16 years or older.

4) In the dispositional order, the court shall include any provisions necessary for the protection and well-being of the child and the family. Such orders may include but are not limited to: evaluation and treatment (including involuntary residential treatment) of substance abuse, mental illness, and emotional disturbance; parenting classes; mandatory school attendance; mediation; visitation orders; restraining orders; and other services or activities for the benefit of the child and his or her family. The court may make a particular placement conditional on compliance with any of the above orders.

5) In any dispositional order that places a child off-reservation, the court shall include a specific plan to ensure that the child maintains cultural and family ties with the Quileute Tribe.

6) Dispositional orders shall specifically state frequency, duration, persons with whom visitation is allowed, and whether visits are to be supervised and, if so, by whom, or shall state that visitation is subject to the discretion of the ICW Office depending upon parent compliance with court orders and/or parent accessing services.

§6.9 REVIEW HEARINGS

A. Scheduling of Review Hearings. The court shall conduct a hearing to review its family preservation plan at least once every six months, or earlier upon motion of any party or upon the court's own motion. If the child has been placed out of the home, the hearing shall be within six months of the date of initial placement. The court shall schedule the first review hearing at the conclusion of the

dispositional hearing. Every review hearing thereafter shall be scheduled at the previous hearing.

B. Considerations at Time of Review Hearing. At the review hearing the court shall review whether the parties are complying with the plan and shall consider whether modification of the order is necessary to protect the child and strengthen the child's family. If the child has been placed out of the home the court shall determine whether reasonable efforts have been made to return the child to the custody of his or her parent(s) or guardian.

C. Permanency Planning. At each review hearing, the court shall either adopt the previously entered permanency plan or modify that plan as appropriate. In considering modification of a permanency plan, the court shall consider whether it is in the child's best interest to proceed to a more permanent disposition than previously ordered, including, but not limited to, guardianship, termination of parental rights, or adoption. The court shall not be subject to any artificial, minimal deadline by which a child's case shall proceed to guardianship, termination of parental rights, and/or adoption. The sole consideration in permanency planning shall be the best interest of the child as defined within this Code, as guided by Quileute custom and tradition. Under this Code, as guided by Quileute custom and tradition, the best interest of the child can never be determined *solely* by the amount of time that may have passed between events in a child's life or the amount of time which may have passed between court hearings.

CHAPTER 7
BIKK'WAYO-KWO»
GUARDIANSHIP

§7.1 PURPOSE

The Quileute term *Bikk'wayo-kwo»* literally means "the role of the person who protectively cares for someone or something." The purpose of this chapter is to provide a mechanism for the appointment of a guardian for a child to ensure a measure of stability and security such that the child has an adult legally responsible for the child, and that the adult has the necessary legal rights to ensure the child receives proper care.

§7.2 PROCEDURE FOR FILING GUARDIANSHIP PETITION

A. Any person who is at least 18 years of age who has an interest in a child may file a petition with the court requesting that he or she be appointed as guardian.

B. As part of permanency planning, the ICW Office may file a petition on behalf of the Tribe for appointment of a guardian in the case of any child who is a ward of the court as a result of a MINOC proceeding.

C. The court clerk shall serve copies of the guardianship petition upon the ICW Office and to the parties within 3 days after the date on which the petition was filed with the court. The preferred method of service for proceedings under this Code is by personal service to the party or to a person over the age of 18 residing at the party's house within the boundaries of the Quileute Reservation. If a party's residence is unknown, the court clerk shall cause documents to be personally served to that party's closest relative residing within the boundaries of the Quileute Reservation, believed to be most likely to provide notice to the party. If personal service on a party or his or current residence is not possible, then one copy of the document shall be sent at least 7 days prior to any hearing by certified mail and one copy by surface mail to the party's last known mailing address.

§7.3 CONTENTS OF A PETITION FOR GUARDIANSHIP

The petition for appointment of a guardian shall include:

A. The name, date of birth, address, and tribal enrollment status of the child;

B. The name, date of birth, address, and tribal status of each petitioner(s), or in the case of a filing by ICW Office, the name, date of birth, address, and tribal status of each proposed guardian(s);

C. The name, date of birth, address, and tribal status of the child's parents;

D. The name and address of the child's current guardian or custodian;

E. A description of any previous adjudication concerning the care and custody of the child;

F. A concise statement of the facts and reasons supporting the request that the petitioner(s) or the person(s) designated by ICW Office be appointed as a guardian;

G. A statement as to why the proposed guardianship is in the best interest of the child and a statement that the contents are true and correct under penalty of perjury under the laws of the Quileute Tribe.

§7.4 SETTING THE GUARDIANSHIP HEARING

Upon filing of the petition for guardianship, the court shall set a date for a guardianship hearing that shall be within 40 days after the guardianship petition is filed. The court shall also order that a home study be conducted. The home study shall be part of the court's record, and, upon filing, the court clerk shall serve the parties (pursuant to the process set forth in Section 7.2, above) at least 10 days before the guardianship hearing.

§7.5 GUARDIANSHIP HEARING – SUMMONS

A. The court shall serve summons to appear at the guardianship hearing at least 20 days before the hearing. The summons shall include:

- 1) The nature of the proceedings of the court;
- 2) The date, time, and place of hearing;
- 3) A copy of the petition which has been filed; and
- 4) Notification that the child, the child's parents, and guardian or custodian have the right to obtain a spokesperson or attorney at their own expense.

B. The following persons shall be served with the required notice pursuant to the process set forth in Section 7.2, above:

- 1) Any child over the age of 12, or at an earlier age if determined appropriate by the court;
- 2) The child's parents;
- 3) The child's current guardian or custodian;

- 4) The petitioner(s);
- 5) Any tribe with which the child is enrolled or eligible for enrollment, and in the case of a child who is a ward of the Quileute Family Court, any tribe which has intervened in a MINOC proceeding; and
- 6) The ICW Office.

§7.6 INTERVENTION BY QUILEUTE INDIAN CHILD WELFARE OFFICE

The ICW Office is not required to be a party or witness in a guardianship case that was not filed by the ICW Office, but may provide the court with information and recommendations.

§7.7 PROCEDURE FOR GUARDIANSHIP HEARING

A. The prospective guardian(s), the child's parent(s), and the child's current guardian or custodian may appear personally at the hearing.

B. The court may examine and take the testimony of the prospective guardian(s), the child's parent(s), the child's current guardian, custodian, and any other person the court has found to have a substantial interest in the child. Any child over the age of 8 shall have the right to meet with the judge in private to present his or her point of view and opinions, unless the court determines that such meeting is not in the child's best interest.

C. The court shall consider all other evidence it deems is relevant to the best interest of the child, including the home study conducted in accordance with this chapter.

D. In determining whether the proposed guardianship would be in the best interest of the child, the court shall consider the placement preferences established in Section 2.5.A.

§7.8 GUARDIANSHIP ORDER

A. The court shall enter an order appointing a guardian pursuant to the petition if it finds, by a preponderance of the evidence, that at the time of the hearing:

- 1) The child has been, or will have been, removed from the custody of the parent(s), guardian, or custodian for a period of no less than one year;
- 2) All necessary services, reasonably available and capable of addressing the issues brought forth in the case within the foreseeable future, have been offered or provided, and the parent(s) have been provided with all reasonable time to access

and complete services and comply with court requirements;

3) There is little likelihood that the conditions will be remedied within a time period that is not so long that the child's emotional well-being will not be placed at risk, giving consideration to the age of the child and the strength of the bond between parent and child; and that

4) A guardianship, rather than termination of the parent/child relationship or continuation of the child's MINOC status, would be in the best interest of the child.

B. The order appointing the guardian shall place the child in the sole care, custody, and control of the appointed guardian.

C. The order appointing the guardian shall empower and charge the appointed guardian with the duty to make major decisions affecting the child including:

1) To consent to marriage of the child, enlistment in the armed services and medical, surgical, dental, and mental health treatment of the child;

2) To represent the child in legal actions and to make other decisions of substantial legal significance concerning the child;

3) To protect and preserve the child's property, to invest it prudently, to account for it faithfully, and at the termination of the guardianship or at the time the child turns 18, to deliver the child's assets to the court with recommendation for appropriate disposition;

4) To fulfill all parental duties for the welfare of the child; and,

5) To fulfill all other duties which the court finds necessary to the circumstances of the child.

D. The order shall inform the guardian that guardianship does not terminate parental rights, and that the guardian may not consent to adoption or enroll the child in a tribe other than the Quileute Tribe.

E. If the court finds that the guardianship petition is not in the best interest of the child, the petition should be dismissed, provided the court may enter an order to protect the best interest of the child.

§7.9 REVIEW HEARINGS

The court shall schedule a review hearing to be held within six months

of the guardianship order to determine whether the guardianship remains in the best interest of the child. The court may schedule periodic review hearings thereafter as it deems necessary to stay informed of the child's situation.

§7.10 MODIFICATION OF ORDER

The court may change, modify, or set aside a guardianship order if circumstances have significantly changed to the point that the court finds, by clear, cogent, and convincing evidence that such a modification is now in the best interest of the child.

§7.11 FOSTER CARE PAYMENTS

Establishment of a guardianship under this Chapter does not preclude a guardian from receiving foster care payments or other financial assistance or services for which the child would otherwise be eligible, including SSI, Social Security disability, and/or income from a trust. When the guardian receives payment from any program intended for the benefit of a child in his or her care, he is strictly accountable for spending those funds for the benefit of that child in accordance with the provisions in this Code prohibiting financial abuse and financial misconduct.

CHAPTER 8
T'SOLÓ'OP'OL HÍDÁ'IS
TERMINATION OF PARENTAL RIGHTS

§8.1 PURPOSE

A parent's rights to, and responsibilities regarding, a child may be terminated by the court according to the procedures in this Chapter. The Quileute term, *t'soló'op'ol hídá'is*, literally means "the end of being someone's parent." The essential identity of each Quileute child is based on their lineage and their link to their ancestors and extended family, and thus, also their link to future generations. Pursuant to Quileute culture and tradition, any termination of parental rights must be approached with extreme caution in order to preserve a child's identity and sense of himself or herself as a critical link to ancestors of the past and to generations in the future. Thus, the Quileute term, *t'soló'op'ol hídá'is*, does not mean the end of being a descendent of a certain family, it is specifically limited to termination of only the parental relationship. Traditionally, Quileute customary adoption, or *Hás»k'wa'*, occurred at death or incapacity of parents. Therefore, pursuant to this Chapter, and in accordance with Quileute custom, termination of parental rights shall only occur in the best interest of the child and where the parent is emotionally or mentally incapacitated to the point that he or she is effectively incapable of parenting the child, as determined under the provisions of this Chapter. Termination of parental rights shall have no effect on a child's actual lineage in a particular family. Except in extremely isolated instances, termination of parental rights shall only occur when the child will be adopted pursuant to Quileute tribal custom where a generally-related couple is desirous of having a child.

§8.2 INITIATING A TERMINATION OF PARENTAL RIGHTS ACTION

Proceedings to terminate parental rights shall be instituted by a petition filed by the ICW Office on behalf of the Tribe or by the parent(s) of the child. If the petition is filed by the child's parent(s), a copy of the petition must be delivered to the ICW Office within 3 days after the petition has been filed. If the petition is filed by the ICW Office, a copy of the petition must be delivered to the child's parent(s) within 3 days after the petition has been filed.

§8.3 CONTENTS OF THE PETITION FOR TERMINATION OF PARENTAL RIGHTS

A. The petition for termination of parental rights shall state the following:

- 1) The name, date of birth, address, and tribal status of the child;
- 2) The name, date of birth, address, and tribal status, if known, of the child's parent(s);
- 3) The name and relationship to the child of the person with whom the child is residing and the length of time at that location; and
- 4) A brief description of the facts supporting a finding that termination of parental rights is in the best interest of the child.

B. A true and correct copy of the child's birth certificate shall be attached to the petition.

§8.4 TERMINATION HEARING PROCEDURE

A. Timing of Hearing. Upon filing of a petition for termination of parental rights, the court shall set a date for a termination hearing which shall not be more than 40 days after the petition is filed.

B. Summons for Hearing.

- 1) Summons to appear at the termination hearing shall be served at least 20 days before the hearing. The summons shall include:
 - a) The nature of the proceedings of the court;
 - b) The date, time, and place of hearing;
 - c) A copy of the petition that has been filed; and
 - d) A notice of each parent's right to be represented by an attorney or spokesperson at his or her own expense.
- 2) The following persons shall be served with the required summons:
 - a) The child's parents;
 - b) The child's guardian;
 - c) The ICW Office;
 - d) The child advocate, if one has been appointed; and
 - e) Any person the court believes necessary for the proper adjudication of the hearing.

C. Pretermination Report. After a petition for termination of parental rights has been filed, the ICW Office shall prepare a written

pretermination report. As part of preparing the report, the ICW Office shall conduct a complete home study and shall consult with the child's parent(s), the child's guardian, custodian, and all health, education, and social services personnel who have had prior professional contact with the child. The report shall contain the following information:

- 1) An evaluation of the present circumstances of the child, the child's parent(s), and the child's guardian or custodian;
- 2) An evaluation of the allegations stated as the basis of the petition;
- 3) The professional opinion of all personnel who have been consulted;
- 4) A statement as to whether termination of parental rights would be in the best interest of the child; and
- 5) A statement that the contents are true and correct under penalty of perjury under the laws of the Quileute Tribe.

F. Service of Pretermination Report. The ICW Office shall mail or hand-deliver the pretermination report to the court and to all parties to the proceeding at least 10 days before the hearing.

D. Parties and Evidence Presented at Termination Hearing.

- 1) The child's parent(s), and the child's guardian, or custodian, if any, shall appear personally at the hearing.
- 2) The court shall examine and take testimony of the ICW Office, the child's parents, the child's guardian, custodian, the child advocate, and any person the court has found to have a substantial interest in the child.
- 3) The court shall consider all other evidence it deems is relevant to the best interests of the child.

F. The court shall enter an order terminating parental rights, when it finds, beyond a reasonable doubt, that, at the time of the hearing:

- 1) The child has been or will have been, removed from the custody of the parent(s), guardian, or custodian for a period of at least 1 year;
- 2) All necessary services, reasonably available and capable of addressing the issues brought forth in the case within the foreseeable future, have been offered or provided and the parent(s) have been provided with all reasonable time to access and complete services and comply with court requirements;

3) There is little likelihood that the conditions will be remedied within a time period that is not so long that the child's emotional well-being will not be placed at risk, giving consideration to the age of the child and the strength of the bond between parent(s) and child; and that one or more of the following has occurred:

a) There is a substantial impairment of the parent-child relationship resulting from substantial failure of the parent(s) to maintain contact with child.

b) The parent(s) has or had engaged in, or substantially failed to protect the child from, willful and repeated physical abuse as defined in this Code which caused or created a substantial risk of death, disfigurement, or impairment of bodily functions.

c) The parent(s) has or had engaged in, or substantially failed to protect the child from, willful and repeated psychological or emotional abuse as defined in this Code which causes or creates a substantial risk of severe psychological or emotional damage to the child, including failure to thrive or attachment disorder.

d) The parent(s) has or had engaged in, or substantially failed to protect the child from, any act of sexual abuse or exploitation as defined in this Code.

4) A termination of the parent/child relationship, rather than a guardianship or continuation of the child's MINOC status, would be in the best interest of the child.

G. Burden of Proof at Termination Hearing. If the court finds the factors set forth above have been proven beyond a reasonable doubt, then the court shall enter an order terminating parental rights and enter the dispositional phase of the hearing.

H. Dispositional Phase. When the court has terminated parental rights, the court shall then allow the child to be placed for adoption as provided for under this Code.

§8.5 ADJUDICATION NOT TO AFFECT ENROLLMENT STATUS

No adjudication of termination of parental rights shall affect the child's enrollment status as a member of any tribe.

§8.6 ENROLLMENT BEFORE ENTRY OF TERMINATION ORDER

A. If a child is eligible for enrollment in the Quileute Tribe, the

ICW case worker shall submit an application for enrollment of the child to the Quileute Enrollment Clerk before any final order terminating parental rights is presented.

B. If a child is eligible for enrollment in a tribe other than the Quileute Tribe, the other tribe shall be notified and an application for enrollment may be submitted to the appropriate enrollment person before entering the order terminating parental rights.

CHAPTER 9
HAS»K'WA
ADOPTION

§9.1 PURPOSE

It is the intent of the Quileute Tribe that adoption of children pursuant to the provisions of this Chapter and the traditional and cultural values set forth in the this Code shall be an available option for the purpose of permanency planning in the best interest of children.

§9.2 REQUIREMENT BEFORE ADOPTION PROCEEDINGS MAY BE INITIATED IN THE QUILEUTE FAMILY COURT

A child may be adopted only if he or she has no parents by reason of death or as a result of proceedings terminating parental rights under Chapter 8 of this Code..

A. Adoption Procedures.

- 1) Any person over 21 years of age (with preference to a person who is at least "generally related", i.e., a member of the same Tribe) may seek to adopt a child who is available for adoption under this chapter by filing a petition with the court.
- 2), To provide permanency planning in a child's best interest, the ICW Office may file on behalf of the Tribe a petition for adoption of any child who is a ward of the Quileute Tribal Court as a result of a MINOC proceeding.
- 3) The petitioner must also deliver a copy of the petition to the ICW Office no later than 3 days after the date on which the petition was filed with the court.
- 4) The petitioner must also deliver a copy of the petition to any tribe with whom the child is enrolled or eligible for enrollment, or any tribe that has previously intervened in the child's court proceedings.

B. Contents of the Petition for Adoption. A petition for adoption shall include the following:

- 1) The name, date of birth, address, and tribal status of the child to be adopted;
- 2) The name, date of birth, address, and tribal status of each of the petitioners;
- 3) The relationship, if any, of the petitioner(s) to the child;
- 4) The names and ages of all other children living in the petitioner's household;

- 5) The name of the person with whom the child is currently residing and the length of time at that location;
- 6) A description of all previous court proceedings involving the care and custody of the child and the results of these proceedings along with copies of all court orders including any order terminating a parent's rights to the child;
- 7) A brief statement of the facts explaining the reason the child is available for adoption and why the proposed adoption is in the best interest of the child;
- 8) The full name to be given to the child upon adoption. A true and correct copy of the child's birth certificate shall be attached to the petition;
- 9) A description of the extent and/or any limitations of contact between the child and extended family of his or her lineage; and
- 10) A statement under penalty of perjury under the laws of the Quileute Tribe that the contents of the petition are true and correct.

C. Adoption Hearing Procedures.

- 1) Adoption Hearing Date. Upon filing of the petition for adoption, the court shall set a date for an adoption hearing within 40 days of the filing of the petition;
- 2) Adoption Hearing Summons to Appear at Hearing. Adoption summons shall be served at least 20 days before the hearing. The notice shall include:
 - a) The nature of the proceedings of the court; and
 - b) The date, time, and place of hearing.
- 3) The following persons shall be served with the adoption summons:
 - a) The child's guardian, if any;
 - b) The ICW Office;
 - c) The proposed adoptive parents; and the child advocate, if one has been appointed.

D. Adoption Report. Upon receipt of the petition for adoption the ICW Office shall prepare a written adoption report. In preparing the report, the ICW Office shall conduct a complete home study and shall consult with the child's guardian; the child's extended family,

including but not limited to Quileute grandparent(s), as appropriate; the proposed adoptive parent(s);, and all health, education, and social services personnel who have had prior professional contact with the child. The adoption report shall contain the following information:

- 1) The physical and mental condition of the child, the proposed adoptive parents, and any other persons living in the parents' home;
- 2) The circumstances of the voluntary or involuntary termination of the biological parent's rights to the child, or of the biological parent's death;
- 3) The home environment, family life, access to health services, and financial resources of the proposed adoptive parent(s);
- 4) The child's and proposed adoptive parents' cultural heritage and tribal status;
- 5) The marital status of the proposed adoptive parent(s);
- 6) The names and ages of the proposed adoptive parents' children and of any other persons residing with the proposed adoptive parent(s);
- 7) A check of the criminal records, if any, of the proposed adoptive parent(s) and anyone else over the age of 16 residing in the home shall be requested from state and La Push Police Departments, and, if appropriate, from the FBI;
- 8) Any evidence of alcohol and drug abuse in the proposed adoptive parent's household;
- 9) Information from health, education, and social service personnel who have had prior professional contacts with the child and/or proposed adoptive parent(s);
- 10) The professional opinion of all persons consulted;
- 11) Certification and description of the good character of the proposed adoptive parent(s) by three character references provided by the proposed adoptive parent(s);
- 12) Any other facts and circumstances relating to whether or not the adoption should be granted;
- 13) A recommendation by the ICW Office as to whether the proposed adoption would be in the best interest of the child; and
- 14) A statement under penalty of perjury that the contents of the report are true and correct under penalty of perjury under the laws of the Quileute Tribe.

E. Service of Adoption Report. The ICW Office shall mail or hand-deliver the adoption report to the court and to all parties to the proceeding at least 10 days before the hearing.

F. Necessary Parties and Evidence Presented at Adoption Hearing.

1) The prospective adoptive parent(s) shall appear personally at the hearing;

2) The court shall require that any child over the age of 10 appear personally at the hearing, unless the court determines that such appearance is not in the child's best interest. The court may require that any child under the age of 10 meet privately with the judge if it determines that to do so would assist the court in making its determination and if such a meeting is not contrary to the best interest of the child;

3) The court shall examine and take testimony of the prospective adoptive parents and the ICW Office. The court may take the testimony of the child and of any other person the court has found to have a substantial interest in the child, including any bonded caregiver;

4) The court shall consider all other evidence it deems is relevant to the best interest of the child.

G. In determining whether the proposed adoption would be in the best interest of the child, the court shall consider the placement preferences established in Section 2.5.A.

H. Findings of Fact and Conclusions Law Supporting an Order of Adoption. The court shall enter an order of adoption pursuant to the petition if it finds that:

1) The child is available for adoption;

2) The petitioner(s) can provide appropriate and adequate parental care for the child;

3) The adoption would be in the best interest of the child.

I. Denial of Petition for Adoption. If the court finds that the adoption petition will not be in the best interest of the child, the petition shall be denied and suitable care shall be arranged for the child. The court may request the ICW Office to provide such services and assist in the placement and the care of the child.

J. Contents of an Adoption Decree. If supported by findings of fact and conclusions of law as set forth in this chapter, the court shall enter a decree of adoption, which shall provide:

- 1) Any adoption pursuant to this subchapter shall give the new adoptive parents all the rights, duties, and liabilities of a biological parent with respect to the adoptive child;
- 2) The adopted child shall be subject to the care and control of the adoptive parents to the same extent that a natural child would be, with full natural rights of inheritance according to law;
- 3) A minor child adopted by order of the court shall assume the surname of the person by whom they are adopted, unless the court orders that it is otherwise in the child's best interest;
- 4) Pursuant to federal law and tribal custom, adoption shall have no effect on a child's membership in the Tribe or eligibility therefor;
- 5) Pursuant to tribal custom, adoption shall not terminate a child's traditional clan relationships; and
- 6) Any applicable adoption support service available for special needs or other children pursuant to applicable federal law or government-to-government agreements, which have been, or may be, entered into by the Quileute Tribal Council.

§9.3 COPY OF DECREE TO AGENCIES

If a decree of adoption is entered, as soon as the time for appeal has expired, or when the adoption is affirmed on appeal, the court clerk shall transmit to the Washington State registrar of vital statistics a certified copy of the adoption decree along with any other forms required by the registrar. A copy shall also be sent to the Quileute Tribe's Enrollment Committee. A copy shall also be sent to the Bureau of Indian Affairs.

CHAPTER 10
DETENTION AND SHELTER CARE FACILITIES

§10.1 DETENTION AND SHELTER CARE FACILITIES

The court shall always detain minors, whether MINOC, Youth-at-Risk, or juvenile offenders, in the least-restrictive-alternative placement, whether detention, shelter care, foster care, or secure facility.

§10.2 CRITERIA FOR DETENTION IN A SECURE FACILITY

A. A juvenile offender or MINOC shall be detained in a secure juvenile detention facility approved by the Tribe only if one or more of the following conditions are met:

- 1) There is probable cause to believe the juvenile is a fugitive from another jurisdiction wanted for an offense that would be a felony if committed by an adult in that jurisdiction.
- 2) There is probable cause to believe the juvenile has committed a murder, sexual assault, or a crime of violence with a deadly weapon or which has resulted in serious bodily injury.
- 3) There is probable cause to believe that the juvenile has committed one of the following acts that would be a criminal offense if committed by an adult: simple assault, assault, negligent homicide, kidnapping, rape or indecent liberties, burglary, or robbery.

B. A juvenile offender or MINOC may be detained in a secure juvenile detention facility approved by the Tribe if the juvenile is charged with committing one of the following acts that would be a criminal offense if committed by an adult: malicious mischief, resisting arrest, indecent liberties, obstructing a public servant, or any other offense involving violence against a person or a violent act resulting in property damage, and one or more of the following conditions are met:

- 1) The juvenile offender or MINOC is already detained or on conditioned release in connection with another delinquency proceeding;
- 2) The juvenile offender or MINOC has a demonstrable record of willful failures to appear at juvenile court proceedings;
- 3) The juvenile offender or MINOC has made an escape attempt and there is reasonable cause to believe the minor will run away or otherwise make himself or herself unavailable for further proceedings; or

4) There is reasonable cause to believe the juvenile offender or MINOC will commit a serious act causing injury to himself or herself, other people, or damage to person or property.

C. Under no circumstances shall any minor, whether juvenile offender or MINOC, be detained under this Code in an adult jail outside of any juvenile detention facility approved by the Tribe.

§10.3 CRITERIA FOR PLACEMENT IN SHELTER CARE FACILITY

A. A juvenile offender or MINOC may be housed in shelter care, relative placement, kinship care, or foster care on the Reservation and approved by the Tribe if one of the following conditions exists:

- 1) A condition described in Section 10.2(B) above is found to exist;
- 2) The juvenile is alleged to have committed an act, other than one listed in Section 10.2(A)(4), that would be a criminal offense if committed by an adult;
- 3) The juvenile is unwilling to return home or to the home of an extended family member;
- 4) The juvenile's parent, guardian, or an extended family member is unavailable, unwilling, or unable to permit the juvenile to return to his home; or
- 5) There is an evident and immediate physical danger to the child in returning home, and all extended family members are unavailable, unwilling, or unable to accept responsibility for temporary care and custody of the juvenile.

§10.4 STANDARDS

The Quileute Justice Committee shall recommend rules and regulations governing the operation of detention and shelter care facilities for promulgation by the Quileute Tribal Council. The Quileute Justice Committee or the Quileute Tribal Council may assign the responsibility to another qualified tribal agency or subcommittee. The rules and regulations shall include the following: education, access to treatment, cleanliness standards, visitation privileges, occupancy standards, provisions for medical and dental care, and provisions for food, furnishings, clothing, and toilet articles.

§10.5 CARE AND TREATMENT IN DETENTION AND SHELTER CARE

The court shall prescribe and enforce policies and procedures governing the administration of any detention and shelter care facilities operated by the Tribe. The court shall not authorize detention

of any juvenile under this Code in a detention or shelter care facility that does not meet the minimal standards, as determined by the Quileute Tribal Council, necessary to address treatment and service needs, cultural needs, educational, and religious needs of the juvenile detained.

CHAPTER 11
TSIDÁ BASKIDA
JUVENILE OFFENDER CODE

§11.1 SOVEREIGNTY

The Quileute Tribe asserts its sovereignty over all offenses committed by juveniles within the exterior boundaries of the Quileute Reservation and all areas and activities governed by the Tribe pursuant to treaty, government-to-government agreement, and/or executive order. The Quileute term, *Tsidá Baskida*, refers to a code that governs a “young person who does forbidden actions.” Only relevant federal law and the Constitution and By-Laws of the Quileute Indian Tribe limit Quileute jurisdiction. The Tribal Court shall have the power to decide questions of jurisdiction and interpretation of the Quileute Constitution and By-Laws that may be raised under this Code.

§11.2 PURPOSE

In addition to the purpose of this Code as stated in Section 2.2, this Chapter is specifically intended to discourage delinquent acts and to protect the Tribe's interest by providing supervision, care, and rehabilitation as follows:

A. These juvenile justice procedures shall apply when a youth is charged with committing an act that would be a criminal offense under the laws of the Quileute Indian Tribe if committed by an adult.

B. The Tribe recognizes the unique needs of youth and their families in these situations. This Chapter is meant to facilitate the rehabilitation of youth offenders so that they will not continue on to become adult offenders. The Tribe believes that the successful rehabilitation of a youth is facilitated if the person(s) responsible for the care of the youth are involved in the process.

C. Consistent with Quileute tribal custom and tradition and for the best interest of the children, the Quileute Tribe, and the tribal community, this Chapter is also meant to provide encouragement and support for parents, guardians, or custodians to provide proper supervision and guidance to the youth during the rehabilitation process, and appropriate consequences for failure of parents, guardians, or custodians to provide such supervision and guidance.

§11.3 NON-CRIMINAL PROCEEDINGS

Any and all proceedings involving a child under this Chapter are non-criminal. No final adjudication in any proceeding involving a child shall be deemed a criminal conviction.

§11.4 USE IN OTHER PROCEEDINGS

Evidence, adjudication, arguments, admissions, and disposition presented in any juvenile offender proceeding in the court shall be inadmissible as evidence against the juvenile in any proceeding in another court.

§11.5 PARENTAL RESPONSIBILITIES

A. Any parent or legal guardian of a youth accused of committing a delinquent act shall have the following responsibilities:

- 1) To attend all court hearings involving the youth. If the parent or guardian is unable to attend any hearing, they must show cause to the court as to why they should be excused;
- 2) To insure that supervision and guidance is provided to the youth during all court proceedings; and
- 3) To monitor the youth during any period of rehabilitation ordered by the court.

B. Any parent or legal guardian of a youth who does not comply with paragraph A. may be ordered to appear before the court and show cause as to why they should not be fined in accordance with paragraph C, below.

C. If, after a hearing, the court determines that a parent or legal guardian has failed to meet their responsibilities under this Chapter, the court may impose a civil penalty not to exceed \$500 for each occurrence.

D. A showing that the parent or legal guardian has turned physical custody of the youth over to a custodian does not excuse the parent or legal guardian from responsibility under this Chapter. The parent or legal guardian may only be excused from responsibility if the youth is under the control of another person as the result of a court order.

§11.6 DUTIES OF LA PUSH POLICE DEPARTMENT

The La Push Police Department shall investigate all incidents in which they have reasonable grounds to believe that a juvenile within the jurisdiction of the Quileute Tribe has committed an offense that, if committed by an adult, would constitute a crime under the Quileute Law and Order Code.

A. In any case in which the juvenile is not subject to the jurisdiction of the Quileute Tribe, the police shall:

- 1) Refer the case to the appropriate tribal or state jurisdiction;

and

2) Provide a report to the ICW Office and the tribal prosecutor for possible civil action.

B. Any officer of the La Push Police Department shall take a minor into custody if:

1) The juvenile has committed a delinquent act in the presence of the officer;

2) The officer has reasonable grounds to believe a delinquent act under Quileute law has been committed and that the minor has committed the delinquent act; or

3) The Quileute Tribal Court has issued a pick-up order for the minor.

C. An arresting officer shall inform the minor of his rights before any questioning in custody;

D. An arresting officer shall release the minor to the minor's parent, guardian, or custodian and issue verbal counsel or warning as may be appropriate, unless shelter care or detention is necessary;

E. If the minor is not released, an arresting officer shall make immediate and recurring efforts to notify the minor's parent, guardian, or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until the need for shelter, care, or detention is determined;

F. If the minor is not released, the minor shall be taken on the next scheduled court day to the court or probation officer by the arresting officer.

G. Referrals to/Assistance from County or Federal Authorities. The La Push Police Department may consult with or seek assistance from other jurisdictions as necessary during investigations and may refer accused juvenile offenders to other jurisdictions in the absence of written policy of the Quileute Tribal Council to the contrary. For any alleged offense that, if committed by an adult, would constitute a crime under the Major Crimes Act, 18 U.S.C. § 1153, the tribal officer shall notify federal authorities under federal law. The La Push Police Department shall notify the Quileute Tribe's executive director and the tribal prosecutor within the next business day of any referral under the Major Crimes Act.

H. Referral to Tribal Prosecutor and ICW Office. Within 2 business days of occurrence, the La Push Police Department shall report all incidents to the tribal prosecutor and the ICW Office in which

they have probable cause to believe that a juvenile committed an offense that, if committed by an adult, would constitute a crime under the Quileute Law and Order Code. Such report shall be made by providing the tribal prosecutor and the ICW Office with a copy of the police report of the incident.

§11.7 JUVENILE OFFENDER COMPLAINT

The tribal prosecutor, ICW Office, or any other official appointed by the Tribe shall file a juvenile offender complaint. The complaint shall contain:

- A. A citation to the Quileute Code provision allegedly violated by the minor;
- B. Name, age, and address of the minor who is the subject of the complaint, if known;
- C. A plain and concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged facts occurred; and
- D. A statement under oath by the complainant that the contents of the complaint are true and correct to the best of his or her knowledge under penalty of perjury under the laws of the Quileute Tribe.

§11.8 PICK-UP ORDER AND OTHER PROCEDURES

The Juvenile Court may issue a pick-up order in accordance with directing that a minor be taken into custody if the court finds there is probable cause to believe the minor committed the delinquent act alleged in the complaint. The shelter care procedures of this Code shall be utilized by the court and tribal officers wherever possible.

§11.9 CUSTODY

A minor must be taken into custody by a tribal officer if:

- A. The officer has reasonable grounds to believe a delinquent act has been committed and that the minor has committed the delinquent act; and/or
- B. A pick-up order has been issued for the minor.

§11.10 DETENTION

A. Any youth alleged to be a juvenile offender may be detained, pending a court hearing, depending upon the severity of the circumstances and giving full consideration to the provisions of Chapter 10 giving the following order of placement preference:

- 1) The home of a responsible relative;

- 2) A foster care home or facility on the Quileute Reservation that has been approved by the Indian Child Welfare Committee;
- 3) A private family home on the Quileute Reservation that has been approved by the ICW Office;
- 4) A licensed foster care home or facility on or off the Quileute Reservation that has been approved by the ICW Office;
- 5) A private family home off the Quileute Reservation that has been approved by the ICW Office;
- 6) A juvenile detention facility operated by a federally recognized Indian tribe;
- 7) A juvenile detention facility operated by any county or city government or by the State of Washington.

B. If the minor's parent, guardian, or custodian has not been contacted, the court or the probation officer shall make immediate and recurring efforts to inform them that the minor has been taken into custody and the minor shall be released to the parent, guardian, or custodian unless detention or shelter care is immediately necessary. If the minor is not released to his parent, guardian, or custodian, the court or the probation officer shall place the minor in detention or shelter care pending the custody hearing.

§11.11 CUSTODY HEARING

If a minor is placed in detention or shelter care pursuant to the above sections and Chapter 10, the court shall conduct a custody hearing within 2 days for the purpose of determining whether continued detention or shelter care is necessary pending further proceedings. If the minor's parent, guardian, or custodian has still not been contacted or is not present at the custody hearing, the court shall determine what efforts have been made to notify and to obtain the presence of the parent, guardian, or custodian. If it appears that further efforts are likely to produce the parent, guardian, or custodian, the court shall recess for not more than 24 hours and direct the probation officer to make continued efforts to obtain the presence of a parent, guardian, or custodian. Notice of the custody hearing shall be given to the minor and his parent, guardian, or custodian as soon as the time for the hearing has been established. The juvenile's presence may be in person, or if they are detained at a facility more than 40 miles from La Push, Washington, the juvenile may appear at the hearing by telephone.

§11.12 PROCEDURE AT CUSTODY HEARING

- A. The court shall inform the minor, his parent, guardian, or

custodian of their right to retain counsel at their own expense, and the judge shall continue the proceedings if it appears that additional time is necessary to obtain counsel.

B. The court shall inform the minor that s/he need not be a witness against, or otherwise incriminate, herself/himself.

C. A minor, his or her counsel, and his or her parent, guardian, or custodian shall have the opportunity to be heard on his, her, and their own behalf in regard to placement or further detention.

D. At the custody hearing, the court shall determine whether:

1) The alleged act is serious enough to warrant continued detention or shelter care; and

2) There is probable cause to believe the minor will run away so that he will be unavailable for further proceedings; or

3) There is a probable cause to believe that the minor will commit a serious act causing damage to himself or herself, another person, or property.

E. The court shall order the further detention or shelter care for the minor upon consideration of the recommendations of the tribal prosecutor or other designated tribal official regarding alternative pre-adjudication custody arrangements.

F. The court may release an alleged juvenile offender to a parent, relative, or other responsible adult if the parent or guardian of the minor consents to the release. If the juvenile is ten years of age or older, the juvenile and his parent, guardian, or custodian must both consent to the custodial responsibility of this person.

§11.13 INVESTIGATION BY TRIBE

The La Push Police Department shall make an investigation within 3 days of the custody hearing or the release of the minor to his parent, guardian, or custodian to determine whether the interests of the juvenile and the Quileute Tribe require that further action be taken. The final determination whether to pursue any legal proceedings regarding an alleged juvenile offender shall be at the discretion of the tribal prosecutor.

Upon the basis of this investigation, the La Push Police Department shall:

A. Report the results of their investigation to ICW and the tribal prosecutor; and

- a. Recommend that no further action be taken;
- b. Suggest to the minor, his parent, guardian, or custodian that they appear for an informal hearing pursuant to this Chapter;
- c. Request the tribal prosecutor to begin transfer of jurisdiction to adult proceedings pursuant to this Chapter; or
- d. Recommend that the tribal prosecutor file a petition pursuant to this Chapter in the court to initiate further proceedings. If the Police Department so recommends, the tribal prosecutor shall file the petition within 3 days if the minor is in detention or shelter care. If the minor has been previously released to his parent, guardian, custodian, relative, or responsible adult, the tribal prosecutor shall file the petition within 10 days.

§11.14 INFORMAL HEARING

Upon recommendation of the La Push Police Department, the ICW Office together with the police may hold an informal conference with the minor and the minor's parent, guardian, or custodian to discuss alternatives to the filing of a juvenile offender petition if:

- A. The uncontested facts bring the case within the juvenile offender jurisdiction of the court;
- B. An informal resolution of the matter would be in the best interest of the minor and the Tribe; and
- C. The minor and his parent, guardian, or custodian consent to an informal adjustment with knowledge that the consent is voluntary.

Notice of the informal hearing shall be given to the minor and his parent, guardian, or custodian, and their attorney or spokesperson as soon as the time for the hearing has been established. This does not authorize the juvenile probation officer to compel any person to appear at any conference, produce any papers, or visit any place.

§11.15 INFORMAL HEARING EVIDENCE

No statement made during the informal hearing may be admitted into evidence at any court hearing or any proceeding against the minor under this Code or in any other court.

§11.16 INFORMAL HEARING DISPOSITION

At the informal hearing, the ICW Office may:

- A. Refer the minor and the parent, guardian, or custodian to a tribal agency for needed assistance;
- B. Order terms of supervision calculated to assist and benefit the minor which regulate the minor's activities and which are within the ability of the minor to perform;
- C. Accept an offer of restitution if voluntarily made by the minor;
- D. Recommend that the matter be deferred to the Elders Panel; or
- E. Recommend that the tribal prosecutor file a petition pursuant to this Chapter.

Any informal resolution period shall not exceed 6 months.

§11.17 INFORMAL HEARING POST DISPOSITION

The ICW Office shall set forth in writing the conclusions reached at the informal hearing and agreements of the juvenile and parents for remedying the situation. The ICW Office shall review the juvenile's progress every 30 days. If, at any time after the initial 30-day period, the ICW Office concludes that positive results are not being achieved, the ICW Office shall recommend that a petition be filed pursuant to this Chapter.

§11.18 PETITION TO INITIATE FURTHER PROCEEDINGS

In those cases, which are not resolved by agreement at an informal hearing, the tribal prosecutor shall file a petition to initiate further proceedings on behalf of the Tribe and in the interest of the juvenile. The petition shall state:

- A. The name, birth date, and residence of the minor;
- B. The names and residences of the minor's parent, guardian, or custodian;
- C. A citation to the Quileute Code provision that the minor is alleged to have violated;
- D. If the minor is in detention or shelter care, the place of detention or shelter care, and the time he was taken into custody; and
- E. All contents are true and correct under penalty of perjury of the Quileute Tribe as attested by the petitioner.

§11.19 SETTING OF CIVIL TRIAL AND DISPOSITION

Upon filing of the petition, the court shall set a date for the civil trial which shall be within 30 days after the petition is filed. If the civil trial

is not held within 30 days after the filing of the petition, the petition shall be dismissed and cannot be filed again, unless:

A. The civil trial is continued upon motion of the juvenile; or

B. The civil trial is continued upon motion of the tribal prosecutor by reason of the unavailability of material evidence or witnesses, and the court finds the tribal prosecutor has exercised due diligence to obtain the material witness(es) or evidence and reasonable grounds exist to believe that the material witness(es) or evidence will become available.

§11.20 SUMMONS TO APPEAR AT CIVIL TRIAL/DISPOSITION

A. The summons to appear at the civil trial in juvenile offender cases shall contain the name of the court, the title of the proceedings, and the date, time, and place of the hearing. An officer of the La Push Police Department or appointee of the court shall personally serve summons. If the summons cannot be delivered personally, the court may deliver the summons by certified mail. If a person who has been issued a summons fails to appear at the hearing, that person shall be held in contempt of court.

B. At least 5 days before the civil trial, the court shall issue summons to:

- 1) The juvenile;
- 2) The juvenile's parent, guardian, or custodian;
- 3) Any person the court believes necessary for the proper adjudication of the hearing; and
- 4) Any person the juvenile believes necessary for the proper adjudication of the civil bench trial. The juvenile must provide name(s) and addresses of such persons to the court at least 10 days before the hearing to ensure proper service.

§11.21 CIVIL BENCH TRIAL/DISPOSITION

The court shall conduct the civil bench trial for the sole purpose of determining beyond a reasonable doubt whether the minor committed the delinquent act. The civil trial shall be closed to all persons that are not a party to the case, except that the juvenile's parent(s), custodian, or guardian shall be present. Upon a finding that the juvenile committed the delinquent act, or an admission by the juvenile that he or she committed the delinquent act, the court shall set a dispositional hearing to take place no later than 20 days subsequent to the fact-finding hearing.

§11.22 RIGHTS OF PARTIES

The parties shall have all rights secured to them by federal or tribal law including, but not limited to:

- A. Right to an attorney or spokesperson at his or her own expense;
- B. Right not to incriminate themselves;
- C. Right to have witnesses subpoenaed to testify on their behalf; and
- D. The minor and the minor's parent, guardian, or custodian shall be entitled to introduce evidence, to be heard on their own behalf, and to examine witnesses.

§11.23 ADMISSION TO ALLEGATIONS; REFERRAL TO QUILEUTE ELDERS PANEL

- A. If the juvenile admits the allegations of the petition, the court shall proceed to the disposition stage only if the court finds:
 - 1) The juvenile fully understands his or her rights under federal and tribal law, and fully understands the potential consequences of his or her admission;
 - 2) The juvenile voluntarily, intelligently, and knowingly admits to all facts necessary to constitute a basis for Juvenile Court action;
 - 3) The juvenile has not, in his or her purported admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations; and
 - 4) Referral to the Quileute Elders Panel pursuant to this Code is not appropriate.
- B. The court shall defer the disposition stage if the juvenile requests to proceed before the Quileute Elders Panel and the Quileute Elders Panel accepts the juvenile's request to proceed before it; provided, however, that if the Quileute Elders Panel determines that the juvenile has failed to comply with requirements established by the Quileute Elders Panel, the juvenile shall proceed directly to disposition under this Chapter.

§11.24 BURDEN OF PROOF AT CIVIL TRIAL

The court shall hear testimony concerning the circumstances that gave rise to the complaint. If the allegations of the petition are supported by proof beyond a reasonable doubt, the court shall find the minor to be a juvenile offender and proceed to the dispositional hearing. A

finding that a minor is a juvenile offender constitutes a final order for purposes of appeal.

§11.25 PREDISPOSITIONAL REPORT

The ICW Office shall prepare a written report describing all reasonable and appropriate alternative dispositions. The report shall contain a specific plan for the care of, and assistance to, the minor calculated to resolve the problems presented in the petition. The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the minor under the proposed plan. Preference shall be given to the dispositional alternatives that are listed in this chapter and select that which is the least restrictive of the minor's freedom and is consistent with the interests of the Tribe. The report shall contain specific reasons for not recommending placement of the minor with his parent, guardian, or custodian. The probation officer shall present the predisposition report to the court, the person selected by the minor to represent him, and the tribal prosecutor at least 1 day before the dispositional hearing.

§11.26 TIME OF DISPOSITIONAL HEARING

A dispositional hearing shall take place within 20 days after the civil trial. At the dispositional hearing, the court shall hear evidence on the question of proper disposition.

§11.27 RIGHTS OF PARTIES

The rights of the parties shall be the same as in the civil trial.

§11.28 DISPOSITIONAL FINDING

At the dispositional hearing, the court shall consider the predisposition report submitted by the ICW Office, and afford the parents and juvenile an opportunity to contradict or clarify the factual contents and conclusions of the reports. The court shall also consider the alternative predisposition report prepared by the minor and his or her attorney or spokesperson, if any. The dispositional order constitutes a final order for purposes of appeal.

§11.29 DISPOSITIONAL ALTERNATIVES

A. If a minor has been adjudged a juvenile offender, the court may make the following dispositions:

- 1) impose sentencing consistent with criminal penalties as stated in Title XIII of the Quileute Law and Order Code;
 - a) for a felony disposition, a sentence of confinement in the range of 52 weeks or until the offender reaches 18 years of age, whichever is

- sooner;
- b) for an anticipatory felony disposition, a sentence of confinement in the range of 15 weeks or until the offender reaches 18 years of age, whichever is sooner;
 - c) for a gross misdemeanor disposition, a sentence of confinement in the range of 15 weeks or until the offender reaches 18 years of age, whichever is sooner;
 - d) for an anticipatory gross misdemeanor disposition, a sentence of any combination of the following:
 - i) probation in the range of 0-12 months;
 - ii) community service in the range of 0-150 hours;
 - iii) fine in the range of \$0 to \$250;
 - e) for a misdemeanor disposition, a sentence of any combination of the following:
 - i) probation in the range of 0-12 months;
 - ii) community service in the range of 0-150 hours;
 - iii) fine in the range of \$0 to \$250;
 - f) for an anticipatory misdemeanor disposition, sentencing is within the discretion of the court, and confinement may not be imposed for anticipatory misdemeanors.
 - g) for an infraction disposition, sentencing is within the discretion of the court, and confinement may not be imposed for infractions.
 - h) The court may impose restitution in lieu of imposing the fine authorized for the crime, or in addition to any other disposition authorized in this Section and in an amount fixed by the court.
- 2) if the juvenile offender is subject to a disposition involving confinement, the court may suspend the disposition on condition that the offender comply with all educational and treatment requirements. If the offender fails to comply with the suspended disposition, the court may revoke the suspended disposition and order the disposition's execution.
- 3) if the court determines that a disposition under alternatives 1 or 2 would be a manifest injustice, the court may impose a disposition less than the identified

disposition for the offense but in no event may any disposition extend beyond 52 weeks or the offender's 18th birthday, whichever shall occur first.

B. The dispositional orders are to be in effect for the time limit set by the court, but no order shall continue after the minor reaches the age of 18 years of age.

C. The dispositional orders are to be reviewed at the court's discretion, but at least once every 6 months.

§11.30 MODIFICATION OF DISPOSITIONAL ORDER

A dispositional order of the court may be modified upon a showing of change of circumstances. The court may modify a dispositional order at any time upon the motion of the juvenile; the juvenile's parent, guardian, or custodian; the ICW Office; or the tribal prosecutor.

If the modification involves a change of custody, the court shall conduct a hearing to review its dispositional order.

§11.31 NOTICE-RIGHTS

Notice in writing of a modification hearing shall be given to the minor, the minor's parent, guardian, or custodian and their counsel at least 48 hours before the hearing. The rights of the parties shall be the same as in a dispositional hearing.

§11.32 MODIFICATION HEARING

The Quileute Family Court shall review the performance of the minor, the minor's parent, guardian, or custodian and the probation officer and other persons providing assistance to the minor and the minor's family. In determining modification of disposition, the procedures for a dispositional hearing shall apply. If the request for a review of disposition is based upon an alleged violation of a court order, the court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

CHAPTER 12
TSIDÁ PÓ'OKW HÍPAXW K'ISÍLI
YOUTH AT RISK

§12.1 JURISDICTION

The Quileute Tribal Court has civil jurisdiction over juveniles domiciled or resident on the Quileute Reservation where the child's behaviors or the conflict between parent and child are so severe that there is reason to believe that the family cannot remain intact and/or safe without court intervention.

§12.2 PARENTAL RIGHT AND RESPONSIBILITY TO ESTABLISH GUIDELINES

The Quileute Tribe finds that, absent situations of abuse or neglect, the experience and maturity of parents makes them best qualified to establish guidelines for the benefit and protection of their children. The right and responsibility for establishing reasonable guidelines for each family belongs to the adults in that family. A parent's right to establish reasonable guidelines for their children is critical to providing for the basic needs of children, including their right to benefit from regular school attendance, their right to appropriate cultural instruction, and their right to be protected from predators and other dangers too common in the modern world. Further, absent abuse or neglect, parents have the right to exercise control over their children. The family is the fundamental resource of life for the Quileute tribal community. Traditional Quileute family values and child-rearing practices shall be recognized and protected to assist families to remain intact in the absence of compelling evidence to the contrary.

§12.3 INTENT

The Quileute Tribe recognizes there is a need for services and assistance for parents and children who are in conflict. These conflicts are manifested by children who exhibit various behaviors including: running away; substance abuse; serious acting out problems; mental health issues such as expressing suicidal thoughts or self-mutilation; school truancy; curfew violations; early teen pregnancy; and other behaviors that endanger or harm themselves or others.

A. Distinction from MINOC. The Quileute Tribe recognizes that some children run away to protect themselves from abuse or neglect in their homes. Abused and neglected children shall be protected pursuant to the MINOC provisions of this Code. It is not the intent and purpose of the Tribe to handle MINOC matters under this Chapter. Services under this Chapter are completely voluntary and

intended as prevention strategies to help families remain intact.

B. Voluntary Services. The Quileute Tribe intends services offered under this Chapter be on a voluntary basis whenever possible to children and their families, and that tribal court involvement will be to facilitate the process and to issue any necessary court orders as agreed upon by Quileute Human Services and the parents and/or the child. Any Quileute tribal court order issued under this Chapter shall provide that a parent who voluntarily agrees to temporary placement of their child in a location necessary for his or her treatment or welfare shall not have an obligation of child support so long as that parent is actively working towards family reconciliation.

§12.4 PURPOSE

It is the purpose of this Chapter to:

- A. Preserve, strengthen, and reconcile families experiencing problems with at-risk youth;
- B. Provide a legal process by which parents who are experiencing problems with at-risk youth can request and receive assistance from juvenile courts in providing appropriate care, treatment, and supervision to such youth; and
- C. Assess the effectiveness of the family reconciliation services program.

§12.5 PROCEDURE TO OBTAIN YOUTH-AT-RISK SERVICES

- A. A parent, child over the age of 14 subject to the jurisdiction of the Quileute Tribe, or ICW Office may petition the tribal court to obtain family reconciliation services.
- B. Upon receipt of a Youth-at-Risk petition, the court shall schedule a mediation conference to occur within 5 days among Quileute Human Services, the parents, the child, the school, and any other appropriate individual or agency.
- C. Quileute Human Services shall adopt protocols to implement the mediation process.
- D. As a result of the mediation conference, Quileute Human Services may take one of the following actions:
 - 1) Propose an order for entry by the court, the terms of which have been agreed upon by all parties, and the purpose of which is to set forth a family service plan, which shall include behavioral goals for the juvenile, to assist in family reconciliation; or

2) In the event that the parties cannot agree upon a court order setting forth a family service plan, Quileute Human Services may refer the case to the tribal prosecutor to determine whether further intervention is necessary.

E. The participants in the mediation conference shall review each Youth-at-Risk case upon at least a six-month period by the mediation group to determine progress and status, and may agree to dismissal of a case, as appropriate.

F. No Youth-at-Risk order may be dismissed absent agreement of all parties to the mediation or otherwise by order of the court upon good cause shown.

§12.6 FAMILY RECONCILIATION SERVICES (FRS)

Families who are in conflict or who are experiencing problems with at-risk-youth or a child who may be in need of services may request family reconciliation services through Quileute Human Services. Quileute Human Services may involve a tribal multi-disciplinary team in its response in determining appropriate services and in providing those services.

A. Quileute Family Services shall attempt to prevent escalation of problems. Services shall be provided to alleviate personal or family situations that present a serious and imminent threat to the health or stability of the child or family.

B. Quileute Family Services shall attempt to maintain intact family units whenever possible. Family_reconciliation services shall be designed to develop skills and support within families to resolve problems related to at-risk youth, children in need of services, or family conflicts before such problems reach a state of crisis or otherwise reach a point of requiring court intervention.

C. The Tribe may offer the following types of services. These services may include but are not limited to referral to services for suicide prevention; psychiatric or other medical care; or psychological, mental health, drug, or alcohol treatment; welfare, legal, educational, or other social services, as appropriate to the needs of the child and the family; and training in parenting, conflict management, and dispute resolution skills.

D. Option of Temporary Alternative Residential Placement at the Request of Parents

1) Upon request, the Tribe may assist parents in accessing temporary relative or kinship placement as necessary for therapeutic reasons or for a "cooling off" period.

2) Upon request, the Tribe may assist parents and/or the child in a referral to another placement that would constitute a least restrictive alternative as defined under the Quileute Family Code.

3) No child shall be placed in out-of-home placement under this chapter absent agreement of all parties in the mediation group and an order of the court finding that the Tribe has made all reasonable efforts necessary to maintain family integrity.

CHAPTER 13
[RESERVED]

CHAPTER 14
JUVENILE CURFEW AND TRUANCY

§14.1 PURPOSE AND ENFORCEMENT

To promote the health, safety, and welfare of the residents of the Quileute Indian Reservation, the Quileute Tribe hereby adopts this Chapter 14 regulating juvenile curfew on the Reservation.

§14.2 VIOLATIONS BY CHILDREN UNDER AGE 14

Any child under the age of 14 years shall be cited for curfew violation if that child is found loitering on the streets, highways or other public places on the Quileute Reservation without adult supervision between the hours of 9:00 P.M. and 5:30 A.M. on any night preceding a school day, or between the hours of 10:00 P.M. and 6:00 A.M. on any other night.

§14.3 VIOLATIONS BY CHILDREN AGES 14 TO 17

Any child who is between the ages of 14 and 17, inclusive, shall be cited for curfew violation if that child is found loitering on the streets, highways, or other public places on the Quileute Reservation without adult supervision between the hours of 10:00 P.M. and 5:30 A.M. on any night preceding a school day, or between the hours of 12:00 midnight and 6:00 A.M. on any other night.

§14.4 CONTRIBUTING TO A MINOR'S VIOLATION OF CURFEW

Any parent or guardian in lawful physical custody of any child who violates this chapter more than three times in any 12-month period of time shall receive a civil citation for contributing to a minor's violation of curfew. If two parents or guardians are in lawful physical custody of the child, they shall be jointly cited for one civil offense.

§14.5 CIVIL PENALTIES FOR PARENT OR GUARDIAN CONTRIBUTING TO A MINOR'S VIOLATION OF CURFEW

A. Any parent or guardian found guilty by a preponderance of the evidence of contributing to a minor's violation of curfew may be fined up to \$500 and/or required to conduct community services for a period not to exceed 10 hours and shall be assessed reasonable court costs.

B. The Court may in its discretion suspend the fine and order the parent or guardian to attend such parenting counseling sessions as are available and as are deemed appropriate in view of the circumstances surrounding the offense, not to exceed 3 months of weekly sessions.

§14.6 CIVIL PENALTIES FOR CHILDREN AGES 14 TO 17 FOR VIOLATION OF CURFEW

A. Any child age 14 to 17, inclusive found guilty by a preponderance of evidence of violation of curfew under this chapter may be fined up to \$200. Alternatively, the court may, in its discretion, and in view of the circumstances surrounding the offense, suspend the fine and require the child to submit to a deferred penalty plan as recommended by the ICW Office, who shall be notified of all citations issued to a child under this Subsection.

B. The deferred penalty plan may include any one or a combination of the following:

- 1) Counseling;
- 2) Maintenance of school grades at an average level of at least a "C";
- 3) Participation in extra curricular activities (sports, music, cultural activities, school-sponsored clubs, etc.); and
- 4) Community service with tribal elders or children.

§14.7 FINES

All fines collected under this ordinance shall be deposited as required by the Quileute Law and Order Code but accounted for separately so that such fines, excluding court costs, can be spent on tribal youth programs as determined by the Tribal Council. Fines imposed against anyone under this Chapter may be taken out of any source of income or other assets if not paid within 30 days of the imposition of the fine.

CHAPTER 15 ATTENDANCE

§15.1 PURPOSE

The purpose of this Chapter is three-fold:

A. To provide a vehicle whereby the Quileute Tribe may directly intervene to provide assistance to any student or child covered by this Chapter;

B. To create a mechanism whereby the Quileute Tribal School and the Quillayute Valley School District may educate students in order to improve the attendance and behavior of juveniles covered by this Chapter; and

C. For the Quileute Tribe to fully assert its sovereignty as allowed under tribal and federal law.

§15.2 COVERAGE

This Chapter, and its provisions, shall apply to all students attending or enrolled in the Quileute Tribal School or the Quillayute Valley School District, and to all children residing or domiciled on the Quileute Reservation who are subject to mandatory school attendance but who are not enrolled or attending any school.

§15.3 ATTENDANCE MANDATORY

A. All parents of any child aged 6 to 17, inclusive, covered by this Chapter shall cause such child to attend school as provided herein, and such child shall have the responsibility to, and therefore shall, attend for the full time when such school may be in session.

B. As used in this section "school" shall include the following:

1) The Quileute Tribal School; and

2) A home-based instructional program as authorized pursuant to RCW §§ 28A.225.010, 28A.410 and 28A.70 or approved under tribal law designed to allow the juvenile and parent to administer to the unique needs of the juvenile.

§15.4 EXCEPTION TO ATTENDANCE PROVIDED

A child and his or her parent(s) shall be excused from the requirements of this Chapter and shall not be subject to the penalties set out herein if:

A. The school attended by the child has excused such child from attendance because the child: is physically or mentally unable to

attend school and the school is providing all legally required services in a home-based or other approved program; is attending a residential school operated by the Tribe, other Indian education agency or the Department of Social and Health Services; or has been temporarily excused upon the request of his or her parents for purposes agreed upon by the school authorities and parent(s); provided that the court shall not permit such excused absences if the court deems such excused absences to cause a serious adverse effect upon the student's educational progress.

B. The child is at least 15 years of age and if:

1) The school attended by the child determines that such child has already attained a reasonable proficiency in the branches required by law to be taught in the first nine grades of the schools as set down by the Tribe;

2) The child has already met graduation requirements in accordance with the State Board of Education;

3) The child had received a certificate of educational competence under rules and regulations established by the State Board of Education; or

4) The child has already met graduation requirements, as imposed by the Quileute Tribal School and that may preempt state requirements.

C. A parent for the purpose of this Chapter means a parent, guardian, or person having legal custody of a child.

§15.5 PROCEDURE UPON A CHILD'S FAILURE TO ATTEND SCHOOL

Whenever a parent or a school official informs the tribal prosecutor that a child required to attend school recurrently fails to attend school without valid justification or for what the school considers to be an unreasonably extended period of time, the tribal prosecutor shall, where appropriate, take some or all of the following actions:

A. Inform the child's custodial parent(s) or guardian by a notice in writing that the child has failed to attend school without valid justification recurrently or for an extended period of time;

B. Schedule a conference or conferences with the custodial parent, parents, or guardian and the child at a time and place reasonably convenient for all persons included for the purpose of analyzing the causes of the child's absences;

C. Coordinate steps with Quileute Social Services and/or the school that the child is required to attend to eliminate or reduce the child's absences. These steps may include, where appropriate, adjusting the child's school program or school or course assignment, providing more individualized or remedial instruction, preparing the child for employment with specific vocational courses or work experience or both, and assisting the parent(s) or child to obtain supplementary services that might eliminate or alleviate the cause or causes for the absence from school;

D. Coordinate with the school and/or Quileute Social Services to ensure provision of additional or continuing counseling for the parent, the child, or both, and provide any other program that is reasonably designed to correct the attendance problems of the child;

E. When a school refers a child with problems other than, or in addition to, school attendance, to the tribal prosecutor or the juvenile probation officer, the referral shall be made under the Youth-at-Risk or other provisions of this Code;

F. Before referring any child or parent(s) to Tribal Court, tribal staff and administrators charged with the enforcement of this Chapter should attempt to develop and implement a corrective plan that takes into account the social, economic, and cultural background of the parent(s) and child involved and that is the least restrictive alternative that accomplishes the goal of increased attendance in school performance;

G. Where a corrective plan has been implemented but tribal staff and administrators charged with the enforcement of this Chapter have determined that the implementation has not been successful, such tribal staff and administrators shall refer the child, the parent(s) or all to tribal court for the imposition of penalties under this Chapter;

H. Any parent or child subject to this Chapter who refuses to comply with the provisions of this section within a reasonable time after being ordered to comply by the court pursuant to an action initiated pursuant to this Code shall be subject to the fines and penalties set forth in this Chapter as well as the provisions for a juvenile offender.

§15.6 PETITION TO JUVENILE COURT FOR VIOLATIONS

If action taken pursuant to the above sections is not successful in substantially reducing a student's absences from school or if the parent(s) or child refuse to comply voluntarily with a Youth-at-Risk proceeding or attendance plan under this Chapter, any of the following actions may be taken:

A. The Quileute Tribal School or the Quillayute Valley School District may request the tribal prosecutor to petition the court to assume jurisdiction under this Chapter for the purpose of alleging a violation of this Chapter by the parent(s) or child.

B. A petition alleging a violation of the above sections of this Chapter may be filed with the court by the parent(s) of such child or by the Quileute Tribal School through the tribal prosecutor. The provisions of this Chapter, in particular, with reference to, and incorporation of, other provisions of the Quileute Family Code shall apply in all such proceedings, except as otherwise stated.

§15.7 ADDITIONAL AUTHORITY OF THE LA PUSH POLICE DEPARTMENT OR NATURAL RESOURCES ENFORCEMENT OFFICERS

A. Officers of the La Push Police Department or tribal natural resources enforcement officers shall assist the Quileute Tribal School in enforcing this Chapter.

B. The La Push Police Department and tribal natural resources enforcement officers shall have the authority to make arrests and/or detentions, serve all legal processes contemplated under this Chapter, and shall have authority to enter all places in which children may be employed for the purpose of making such investigations as may be necessary for the enforcement of this Chapter.

C. The La Push Police Department or tribal natural resources enforcement officers are authorized to take into custody any child subject to this Chapter, if the child is at least 10 years of age but not over 18 years of age, when the officer has reasonable grounds to believe that the child may be a truant from school, and thereafter to transport such child to his/her parents for investigation and explanation, or to the school that the child should properly attend.

D. The La Push Police Department shall refer cases as necessary to the tribal prosecutor to institute proceedings against any officer, parent, guardian, person, company, or corporation violating any provisions of this Chapter, and shall otherwise discharge the duties prescribed in this Chapter.

§15.8 PENALTIES IN GENERAL - DEFENSE - SUSPENSION OF FINE - COMPLAINTS TO COURT

A. Any person found by the tribal court to have violated or to be violating any of the provisions of this Chapter shall be subject to diversionary action under the Youth-at-Risk provisions of this Code or fined up to \$25 dollars for each day of unexcused absence from school. In addition, a child found to be in violation shall be required to

attend school. Failure by a child to comply with an order issued under this section shall be punishable by a fine of \$25 dollars for each day that the child fails to comply. The tribal court may order that the parent(s), the child, or all comply with the program set out by the tribal attendance officer, or as modified by the tribal court.

B. It shall be a defense for a parent charged with violating this Chapter to show that he or she exercised reasonable diligence in attempting to cause a child in his or her custody to attend school, or that the child's school did not perform its duties as required under the law. Any fine imposed pursuant to this Section may be suspended upon the condition that (i) a parent charged with violating this Chapter shall participate with the Tribe, the school, and the child in a supervised plan for the child's attendance at school; (ii) the parent attend a conference or counseling scheduled by the tribal attendance officer for the purpose of analyzing the causes of a child's absence; or the parent comply with any other plan determined to be appropriate to assist the child to attend school.

C. Where the court proceeding involves a child referred for discipline reasons, the court may suspend any fine imposed if the child agrees to comply with a plan developed by the tribal attendance officer, as may be modified by the court in its discretion.

§15.9 TRIBAL PROSECUTOR TO ACT FOR COMPLAINANT

The tribal prosecutor shall act as attorney for the complainant in all court proceedings relating to the compulsory attendance of children as required by this Chapter except for those petitions filed against any child by the parent without the Tribe's assistance.

CHAPTER 16 MISCELLANEOUS

§16.1 EFFECTIVE DATE

This Title shall take effect and be enforced immediately upon the approval, pursuant to QUILEUTE CONSTITUTION, art. IV, § 1(j), of the Secretary of the Interior or his designee.

§16.2 BIA APPROVAL

Pursuant to QUILEUTE CONSTITUTION, art. IV, § 1(j), this Title is approved by the Secretary of the Interior, or his designee, on this 20th day of May, 2011.

CHAPTER 17

QUILEUTE ELDERS PANEL

§17.1 QUILEUTE ELDERS PANEL ESTABLISHED

The Quileute Tribe recognizes that its children and youth are the Tribe's greatest treasure and resource. To support Quileute children and youth who have come into contact with the Quileute justice system, the Quileute Tribe finds it in the Tribe's best interest to establish the Quileute Elders Panel as an adjunct body to the Quileute Tribal Court pursuant to the inherent sovereign authority reserved under the Quileute Tribal Constitution and Quileute traditional law and custom.

§17.2 PURPOSE

The purpose of the Quileute Elders Panel ("Elders Panel") is to:

- A. provide a diversionary program for juveniles charged with offenses under Quileute law as a voluntary alternative to the Tribal Court process; and
- B. provide guidance to Quileute youth consistent with traditional Quileute cultural and spiritual values.

The Elders Panel is encouraged and expected to use traditional knowledge and experience to determine the best corrective action for each participant before the Elders Panel.

§17.3 AUTHORITY OF THE ELDERS PANEL

The Elders Panel shall have the authority to require any participant to do any of the following:

- A. perform non-compensated community cultural service work for elders and/or the Tribe as a way of "paying back" the community;
- B. attend or participate in traditional events of a spiritual or cultural nature;
- C. construct a family tree;
- D. make restitution, in a traditional manner, to victims for damage caused by the participant's actions;
- E. attend or participate in educational or informational sessions offered by the Quileute Tribe or individual Quileute tribal members; and
- F. any other traditional, cultural or spiritual activity the Elders Panel determines is in the best interest of the participant.

§17.4 COORDINATION OF THE ELDERS PANEL BY THE TRIBAL COURT CLERK

The Elders Panel will be coordinated by the clerk of the Quileute Tribal Court. The Elders Panel shall not incur direct program expenses.

§17.5 CONFIDENTIALITY OF ELDERS PANEL RECORDS

The records of the Elders Panel are confidential, and strict confidentiality shall be maintained by the Elders Panel, the Quileute Tribal Court, and all participants before the Elders Panel. Except for copies held by a participant, the participant's parent or legal guardian, and the Elders Panel, all records shall be stored and kept confidential by the court. All agreements, forms, written orders, certificates of compliance, etc., shall be filed with the clerk of court.

§17.6 PANEL MEMBERSHIP

The Elders Panel is composed of 5 volunteer elders who have an interest in assisting Quileute children and youth under the age of 18 who have come in contact with the Quileute justice system.

A panel of three members of the Elders Panel will counsel each participant for the duration of the participation or until the elder's term has expired, whichever is sooner.

§17.7 QUALIFICATIONS OF PANEL MEMBERS

Members of the Elders Panel will have the following qualifications :

- A. Members must be 50 years old or older and be recognized as an elder by the Quileute Indian Tribe;
- B. Members will possess sufficient cultural knowledge, educational experience and other attributes of a traditional Quileute elder's experience;
- C. Members shall not be currently seated as a Quileute Tribal Council member; and
- D. Members must not have been convicted of a felony at any time in their life.

§17.8 CONFLICT OF INTEREST

- A. Members of the Elders Panel agree to recuse themselves from serving on a panel in which they have a conflict of interest or a perceived conflict of interest. The Quileute Tribal Court will have authority to determine a violation of confidentiality or conflict of interest.
- B. A conflict of interest is likely or may be perceived when a member of the panel has a real or seeming incompatibility

between the member's private interests and the member's position of trust as a member of the panel. An example of a conflict of interest is when a juvenile participant is a grandchild of an Elders Panel member.

§17.9 CONFIDENTIALITY

An oath of confidentiality must be executed by any Elders Panel member before they receive any information about any referred participant. Elders Panel members agree to keep in strictest confidence any information they receive when acting as a members of the Elders Panel, and to discuss such information with only the participant or other Panel members.

§17.10 MEMBER APPOINTMENT PROCEDURES

During its annual meeting, the general membership will recommend by voice vote five Quileute elders to serve on the Elders Panel. The Quileute Tribal Council will appoint by resolution five elders to serve on the Elders Panel at the next regularly scheduled meeting of the Quileute Tribal Council.

§17.11 TERMS OF MEMBERS

Members of the Elders Panel shall serve one-year terms. Membership on the Elders Panel will not be limited to a finite number of terms. The terms of members not reappointed by the Tribal Council will terminate upon the Tribal Council's appointment of a replacement member.

§17.12 VACANCY ON ELDERS PANEL

The Quileute Tribal Court may on its own, or at the request of three members of the Elders Panel, declare a position to be vacant if a member is unwilling or unable to fulfill their duties, if a member has violated confidentiality, or fails to recuse themselves in a matter despite a conflict of interest.

In the event of a vacancy, the Quileute Tribal Council will appoint a qualified Quileute elder to fill the vacant position on the Elders Panel to serve the remainder of the unexpired term. At the end of the unexpired term, the position will then filled by appointment pursuant to Section 17.10.

§17.13 PARTICIPATION IN THE ELDERS PANEL

A. Any juvenile charged with a juvenile offense under Quileute law may request participation in the Elders Panel as a deferred disposition under the Quileute Juvenile Code.

B. The court shall advise the juvenile, his or her parent(s), and/or legal guardian of the juvenile's rights under Quileute law before the

juvenile, his or her parent(s), and/or legal guardian proceed under paragraph C of this section.

C. Any juvenile charged with a juvenile offense under Quileute law who wishes to proceed before the Elders Panel shall in writing (i) acknowledge that he or she committed the act(s) charged, and (ii) obtain the signature of the tribal prosecutor concurring in the juvenile's acknowledgment of the act(s) charged. The Tribal Court shall maintain a form for such purposes.

D. The tribal prosecutor may recommend that the court impose counseling or treatment services and/or any variety of behavioral conditions including but not limited to, school attendance, curfew, abstinence from drugs and alcohol, and urinalysis during the juvenile's participation in the Elders Panel process. Aside from recommendation of interim services, behavioral conditions, and treatment, the tribal prosecutor shall have no authority with respect to the Elders Panel process.

E. Upon consideration of the tribal prosecutor's recommendations and after issuing any order regarding interim services, the Tribal Court shall refer the juvenile to the Elders Panel.

§17.14 ACCEPTANCE/DECLINATION BY THE ELDERS PANEL

A. Within 10 days of receipt of the court's referral for participation to the Elders Panel, the clerk of court will convene a panel of three members of the Elders Panel.

B. As a prerequisite to any participation in the Elders Panel, the juvenile and his or her parent(s), legal guardian, and/or custodian shall make a traditional request for participation directly to the Elders Panel.

C. The Elders Panel shall, within 10 days of convening, review the court referral, the juvenile's request, and the juvenile's court file for the instant charges and submit to the court a written acceptance or declination of the request. The acceptance or declination will be on a form maintained by the Tribal Court.

D. The Elders Panel has full discretion to accept or decline any request for participation, and the decision of the Elders Panel shall be final and nonreviewable.

E. Upon acceptance of a request, the Elders Panel will order the juvenile to appear within 10 days, accompanied by his or her parent(s), legal guardian, and/or custodian, before the Elders Panel to commence participation in the Elders Panel.

F. Upon declination of the request, the Tribal Court shall proceed to

disposition under the Juvenile Offender Code.

§17.15 AGREEMENT OF PARTICIPATION

At a first appearance before the Elders Panel, the juvenile and his or her parent(s), legal guardian, and/or custodian will execute an agreement of participation in the Elders Panel containing the following terms:

- A. identification of charges being deferred and the maximum penalties for those charges;
- B. admission to wrong-doing commensurate with the original charges;
- C. requirement of satisfactory participation in the Elders Panel, as determined solely by the Elders Panel;
- D. a term of participation that will not exceed 6 months or the juvenile's 18th birthday, whichever is sooner;
- E. agreement to perform a corrective action plan determined in the sole discretion of the Elders Panel;
- F. acknowledgement that, upon referral back to the Tribal Court by the Elders Panel, the deferred juvenile proceedings will proceed directly to disposition;
- G. acknowledgement that the juvenile voluntarily entered the Elders Panel process and was neither coerced nor was offered any inducement or promises other than those contained in the agreement of participation;
- H. the consent of the juvenile's parent(s), legal guardian, and/or custodian; and
- I. requirement that all steps required by the Elders Panel to be completed by the juvenile consistent with subsection D herein.

Upon execution of the agreement of participation, the juvenile becomes a participant. The Tribal Court will maintain a form agreement of participation.

§17.16 TOLLING OF CERTAIN TIME REQUIREMENTS

For the duration of an agreement of participation, the time limits applicable to prosecution of juvenile offenses will toll. Tolling of these time limits will stop on the date of (i) declination of the Elders Panel under Section 17.14 above for the juvenile to participate in the Elders Panel process or (ii) referral back to the Tribal Court by the Elders Panel because of the participant's noncompliance with an agreement of

participation.

§17.17 CORRECTIVE ACTION PLAN

In conjunction with but in no event more than 15 calendar days after the execution of the agreement of participation, the Elders Panel shall establish the participant's corrective action plan and the court clerk shall serve the action plan on the participant and his or her parent(s), legal guardian, and/or custodian. The Tribal Court will maintain a form corrective action plan.

§17.18 REFERRAL BACK TO TRIBAL COURT

The Elders Panel may, in its sole discretion and at any time in the participation process, refer a participant back to the Tribal Court for noncompliance with the agreement of participation. The referral must be in writing. The Tribal Court will maintain a form for such referrals.

§17.19 COMPLETION OF AGREEMENT OF PARTICIPATION AND REQUEST FOR DISMISSAL OF JUVENILE CHARGES

Upon the Elders Panel's determination that the participant has successfully completed the requirements of the agreement of participation, the Elders Panel will submit a certification of accomplishment and request that the Tribal Court dismiss the juvenile offenses charged. Such a certification and request will be made on a form maintained by the Quileute Tribal Court. Upon receipt of a duly executed certification and request by the Elders Panel, the Tribal Court shall dismiss the juvenile charges.

§17.20 LIMITATION OF LIABILITY

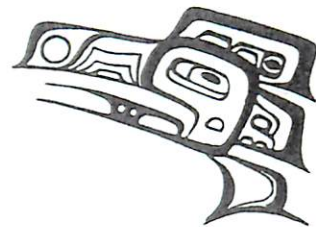
As a body created pursuant to the Quileute Tribe's inherent sovereignty and as an adjunct to the Tribal Court, the Elders Panel shall share in all privileges and immunities of tribal governmental officials, including but not limited to sovereign immunity from suit. No individual member of the Elders Panel shall be held liable for any direction given by the Elders Panel to a participant before the Elders Panel. All acts of the Elders Panel performed within the scope of their authority shall be considered acts of the Quileute Indian Tribe.

§17.21 SEVERABILITY

In the event that any provision in this Chapter is held invalid or unenforceable, it is the intent of the Quileute Tribe that the remaining provisions of this Chapter shall continue in full force and effect.



QUILEUTE TRIBAL COUNCIL



POST OFFICE BOX 279
LA PUSH, WASHINGTON 98350-0279
TELEPHONE (360) 374-6163
FAX (360) 374-6311

2011
Year

5574

Program

ACTION OF THE QUILEUTE TRIBAL COUNCIL FROM: SECRETARY, QUILEUTE TRIBAL COUNCIL

Date of Meeting: 5/12/11

YF
Ex. Director Initials

Motion to approve Resolution 2011-A-28
to include the Quileute Elders Panel
Ordinance as Chapter 17 of the
Quileute Family Code.

Moved By: Vice-Chairman Treasurer _____ Secretary _____ Member _____
Second By: Vice-Chairman _____ Treasurer _____ Secretary _____ Member
Chairman: _____

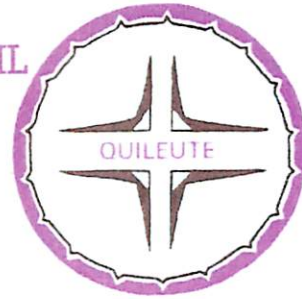
Vote: FOR 4 AGAINST 0 ABSTAIN _____

Deanna Hudson
Secretary



QUILEUTE TRIBAL COUNCIL

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QUILEUTE TRIBAL COUNCIL

RESOLUTION NO. 2011-A-28

WHEREAS, the Quileute Tribe is an Indian tribe organized under the Indian Reorganization Act, and the Quileute Tribal Council is the duly constituted governing body of the Quileute Tribe by authority of article III of the CONSTITUTION AND BY-LAWS OF THE QUILEUTE TRIBE OF THE QUILEUTE RESERVATION, approved on November 11, 1936 by the Secretary of the Interior; and

WHEREAS, the ancestors of the present Quileute Tribe were a party to the Olympia Treaty of 1855, and enjoy the rights reserved to it by that Treaty; and,

WHEREAS, the Quileute Tribal Council has authority to enact ordinances pursuant to QUILEUTE CONST., art. VI, § 1(i); and

WHEREAS, the Quileute Juvenile Code, Title VIII of the Quileute Law & Order Code was originally enacted in 1974;

WHEREAS, the Tribal Council has determined that it is in the best interests of the Quileute Tribe to expand and modernize its Juvenile Code such that it addresses the issues facing Quileute youth, provides clear notice to the Quileute community of the processes followed in matters affecting juveniles, and appropriately reflects Quileute cultural values; and

WHEREAS, it is essential to have a formal mechanism by which the wisdom and teachings of elders within the Quileute community is communicated to juveniles involved in the legal system.

NOW THEREFORE BE IT RESOLVED that the Quileute Tribal Council hereby enacts the Quileute Family Code, which shall include the Quileute Elders Panel Ordinance as Chapter 17 of the Quileute Family Code, in the form attached hereto as Exhibit A;

continued on following page

AND BE IT FURTHER RESOLVED that the Quileute Juvenile Code, Title VIII of the Quileute Law and Order Code, is hereby repealed in its entirety.

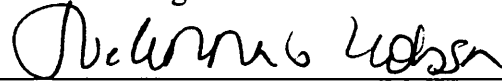
QUILEUTE TRIBAL COUNCIL



Bonita Cleveland, Chairwoman

CERTIFICATION

The foregoing Resolution was adopted at a regular meeting held on May 12, 2011, at which time a quorum was present, and the Resolution was adopted by a vote of 4 FOR, 0 AGAINST, and ABSTAINING/NOT VOTING, the Chairperson, or the Vice-Chairperson in her absence, being authorized to sign the resolution.



Deanna Hobson
Tribal Council Secretary
or authorized designee

EXHIBIT A:
QUILEUTE FAMILY CODE
INCORPORATING QUILEUTE ELDERS PANEL ORDINANCE AS
CHAPTER 17

Quileute Elders Panel Ordinance

Chapter 17 Quileute Elders Panel

17.1. Quileute Elders Panel Established

The Quileute Tribe recognizes that its children and youth are the Tribe's greatest treasure and resource. To support Quileute children and youth who have come into contact with the Quileute justice system, the Quileute Tribe finds it in the Tribe's best interest to establish the Quileute Elders Panel as an adjunct body to the Quileute Tribal Court pursuant to the inherent sovereign authority reserved under the Quileute Tribal Constitution and Quileute traditional law and custom.

17.2. Purpose

The purpose of the Quileute Elders Panel ("Elders Panel") is to:

- A. provide a diversionary program for juveniles charged with offenses under Quileute law as a voluntary alternative to the Tribal Court process; and
- B. provide guidance to Quileute youth consistent with traditional Quileute cultural and spiritual values.

The Elders Panel is encouraged and expected to use traditional knowledge and experience to determine the best corrective action for each participant before the Elders Panel.

17.3. Authority of the Elders Panel

The Elders Panel shall have the authority to require any participant to do any of the following:

- A. perform non-compensated community cultural service work for elders and/or the Tribe as a way of "paying back" the community;
- B. attend or participate in traditional events of a spiritual or cultural nature;
- C. construct a family tree;
- D. make restitution, in a traditional manner, to victims for damage caused by the participant's actions;
- E. attend or participate in educational or informational sessions offered by the Quileute Tribe or individual Quileute tribal members; and
- F. any other traditional, cultural or spiritual activity the Elders Panel determines is in the best interest of the participant.

17.4. Coordination of the Elders Panel by the Tribal Court Clerk

The Elders Panel will be coordinated by the clerk of the Quileute Tribal Court. The Elders Panel shall not incur direct program expenses.

17.5. Confidentiality of Elders Panel Records

The records of the Elders Panel are confidential, and strict confidentiality shall be maintained by the Elders Panel, the Quileute Tribal Court, and all participants before the Elders Panel. Except for copies held by a participant, the participant's parent or legal guardian, and the Elders Panel, all records shall be stored and kept confidential by the court. All agreements, forms, written orders, certificates of compliance, etc., shall be filed with the clerk of court.

17.6. Panel Membership

The Elders Panel is composed of 5 volunteer elders who have an interest in assisting Quileute children and youth under the age of 18 who have come in contact with the Quileute justice system.

A panel of three members of the Elders Panel will counsel each participant for the duration of the participation or until the elder's term has expired, whichever is sooner.

17.7. Qualifications of Panel Members

Members of the Elders Panel will have the following qualifications:

- A. Members must be 50 years old or older and be recognized as an elder by the Quileute Indian Tribe;
- B. Members will possess sufficient cultural knowledge, educational experience and other attributes of a traditional Quileute elder's experience;
- C. Members shall not be currently seated as a Quileute Tribal Council member; and
- D. Members must not have been convicted of a felony at any time in their life.

17.8. Conflict of Interest

A. Members of the Elders Panel agree to recuse themselves from serving on a panel in which they have a conflict of interest or a perceived conflict of interest. The Quileute Tribal Court will have authority to determine a violation of confidentiality or conflict of interest.

B. A conflict of interest is likely or may be perceived when a member of the panel has a real or seeming incompatibility between the member's private interests and the member's position of trust as a member of the panel. An example of a conflict of interest is when a juvenile participant is a grandchild of an Elders Panel member.

17.9. Confidentiality

An oath of confidentiality must be executed by any Elders Panel member before they receive any information about any referred participant. Elders Panel members agree to keep in strictest confidence any information they receive when acting as a members of the Elders Panel, and to discuss such information with only the participant or other Panel members.

17.10. Member Appointment Procedures

During its annual meeting, the general membership will recommend by voice vote five Quileute elders to serve on the Elders Panel. The Quileute Tribal Council will appoint by resolution five elders to serve on the Elders Panel at the next regularly scheduled meeting of the Quileute Tribal Council.

17.11. Terms of Members

Members of the Elders Panel shall serve one-year terms. Membership on the Elders Panel will not be limited to a finite number of terms. The terms of members not reappointed by the Tribal Council will terminate upon the Tribal Council's appointment of a replacement member.

17.12. Vacancy on Elders Panel

A. The Quileute Tribal Court may on its own, or at the request of three members of the Elders Panel, declare a position to be vacant if a member is unwilling or unable to fulfill their duties, if a member has violated confidentiality, or fails to recuse themselves in a matter despite a conflict of interest.

B. In the event of a vacancy, the Quileute Tribal Council will appoint a qualified Quileute elder to fill the vacant position on the Elders Panel to serve the remainder of the unexpired term. At the end of the unexpired term, the position will then filled by appointment pursuant to Section 17.10.

17.13. Participation in the Elders Panel

A. Any juvenile charged with a juvenile offense under Quileute law may request participation in the Elders Panel as a deferred disposition under the Quileute Juvenile Code.

B. The court shall advise the juvenile, his or her parent(s), and/or legal guardian of the juvenile's rights under Quileute law before the juvenile, his or her parent(s), and/or legal guardian proceed under paragraph C of this section.

C. Any juvenile charged with a juvenile offense under Quileute law who wishes to proceed before the Elders Panel shall in writing (i) acknowledge that he or she committed the act(s) charged, and (ii) obtain the signature of the tribal prosecutor concurring in the juvenile's acknowledgment of the act(s) charged. The Tribal Court shall maintain a form for such purposes.

D. The tribal prosecutor may recommend that the court impose counseling or treatment services and/or any variety of behavioral conditions including but not limited

to, school attendance, curfew, abstinence from drugs and alcohol, and urinalysis during the juvenile's participation in the Elders Panel process. Aside from recommendation of interim services, behavioral conditions, and treatment, the tribal prosecutor shall have no authority with respect to the Elders Panel process.

E. Upon consideration of the tribal prosecutor's recommendations and after issuing any order regarding interim services, the Tribal Court shall refer the juvenile to the Elders Panel.

17.14. Acceptance/Declination by the Elders Panel

A. Within 10 days of receipt of the court's referral for participation to the Elders Panel, the clerk of court will convene a panel of three members of the Elders Panel.

B. As a prerequisite to any participation in the Elders Panel, the juvenile and his or her parent(s), legal guardian, and/or custodian shall make a traditional request for participation directly to the Elders Panel.

C. The Elders Panel shall, within 10 days of convening, review the court referral, the juvenile's request, and the juvenile's court file for the instant charges and submit to the court a written acceptance or declination of the request. The acceptance or declination will be on a form maintained by the Tribal Court.

D. The Elders Panel has full discretion to accept or decline any request for participation, and the decision of the Elders Panel shall be final and nonreviewable.

E. Upon acceptance of a request, the Elders Panel will order the juvenile to appear within 10 days, accompanied by his or her parent(s), legal guardian, and/or custodian, before the Elders Panel to commence participation in the Elders Panel.

F. Upon declination of the request, the Tribal Court shall proceed to disposition under the Juvenile Offender Code.

17.15. Agreement of Participation

At a first appearance before the Elders Panel, the juvenile and his or her parent(s), legal guardian, and/or custodian will execute an agreement of participation in the Elders Panel containing the following terms:

A. identification of charges being deferred and the maximum penalties for those charges;

B. admission to wrong-doing commensurate with the original charges;

C. requirement of satisfactory participation in the Elders Panel, as determined solely by the Elders Panel;

D. a term of participation that will not exceed 6 months or the juvenile's 18th birthday, whichever is sooner;

E. agreement to perform a corrective action plan determined in the sole discretion of the Elders Panel;

F. acknowledgement that, upon referral back to the Tribal Court by the Elders Panel, the deferred juvenile proceedings will proceed directly to disposition;

G. acknowledgement that the juvenile voluntarily entered the Elders Panel process and was neither coerced nor was offered any inducement or promises other than those contained in the agreement of participation;

H. the consent of the juvenile's parent(s), legal guardian, and/or custodian; and

I. requirement that all steps required by the Elders Panel to be completed by the juvenile consistent with subsection D herein.

Upon execution of the agreement of participation, the juvenile becomes a participant. The Tribal Court will maintain a form agreement of participation.

17.16. Tolling of Certain Time Requirements

For the duration of an agreement of participation, the time limits applicable to prosecution of juvenile offenses will toll. Tolling of these time limits will stop on the date of (i) declination of the Elders Panel under Section 17.14 above for the juvenile to participate in the Elders Panel process or (ii) referral back to the Tribal Court by the Elders Panel because of the participant's noncompliance with an agreement of participation.

17.17. Corrective Action Plan

In conjunction with but in no event more than 15 calendar days after the execution of the agreement of participation, the Elders Panel shall establish the participant's corrective action plan and the court clerk shall serve the action plan on the participant and his or her parent(s), legal guardian, and/or custodian. The Tribal Court will maintain a form corrective action plan.

17.18. Referral Back to Tribal Court

The Elders Panel may, in its sole discretion and at any time in the participation process, refer a participant back to the Tribal Court for noncompliance with the agreement of participation. The referral must be in writing. The Tribal Court will maintain a form for such referrals.

17.19. Completion of Agreement of Participation and Request for Dismissal of Juvenile Charges

Upon the Elders Panel's determination that the participant has successfully completed the requirements of the agreement of participation, the Elders Panel will submit a certification of accomplishment and request that the Tribal Court dismiss the juvenile offenses charged. Such a certification and request will be made on a form maintained by the Quileute Tribal Court. Upon receipt of a duly executed certification and request by the Elders Panel, the Tribal Court shall dismiss the juvenile charges.

17.20.Limitation of Liability

As a body created pursuant to the Quileute Tribe’s inherent sovereignty and as an adjunct to the Tribal Court, the Elders Panel shall share in all privileges and immunities of tribal governmental officials, including but not limited to sovereign immunity from suit. No individual member of the Elders Panel shall be held liable for any direction given by the Elders Panel to a participant before the Elders Panel. All acts of the Elders Panel performed within the scope of their authority shall be considered acts of the Quileute Indian Tribe.

17.21.Severability

In the event that any provision in this Chapter is held invalid or unenforceable, it is the intent of the Quileute Tribe that the remaining provisions of this Chapter shall continue in full force and effect.



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Northwest Regional Office
911 N.E. 11th Avenue
Portland, Oregon 97232-4169



AUG 26 2011

MEMORANDUM

To: Superintendent, Olympic Peninsula Agency

From: Northwest Regional Director

Subject: Quileute Family Code Resolution No. 2011-A-28

2011 AUG 29 A 10:38
BIA/OPA

This office is in receipt of Resolution No. 2011-A-28, the Quileute Family Code enacted by the Quileute Tribal Council on May 12, 2011. This resolution was enacted in accordance with Article VI, Section 1(i) and (j) of the Constitution and Bylaws of the Quileute Tribe (Tribe).

This office and the Office of the Regional Solicitor have reviewed this Code and we have the following comments.

The Tribe's authority to adopt and enforce ordinances is limited by federal law. *Id.* Art. VI. § 1. The Law & Order Code under review addresses the commission of criminal offenses. It states as follows: "To the greatest extent permitted by the Quileute Constitution and federal law, the Quileute Tribe asserts its sovereign authority over all criminal offenses committed within the Quileute Reservation." Art. XIII, § 13.1.2. As written, this statute is consistent with existing law because it qualifies the Tribe's criminal jurisdiction. This statute is therefore consistent with current law holding that Indian tribes do not have criminal jurisdiction over non-Indians. See *Oliphant v. Suquamish*, 435 U.S. 191 (1978). In addition, it is consistent with the position of the Ninth Circuit Court, which has held that criminal jurisdiction of tribes over nonmember Indians applies only to Indians who are enrolled members of a recognized tribe, not to persons who are only ethnically Indians. *Means v. Navajo Nation*, 420 F.3d 1037, 1043 (2005). Moreover, any tribe exercising criminal jurisdiction over a nonmember must afford the accused, pursuant to the Indian Civil Rights Act, 25 U.S.C. § 1302, all of the rights to which he would be entitled under the United States Constitution, *Id.* at 1046-47.

All of the criminal provisions appear to apply to tribal members as well as nontribal members. Due to Supreme Court precedent, the Tribe may have some difficulty enforcing these provisions in cases involving incidents occurring on non-Indian fee land or in cases in which action is brought against Indians who are not members of the Tribe. See, e.g. *Montana v. United States* 450 U.S. 544, 566-65 (1981) (Indian tribes' inherent sovereign powers do not extend to the activities of nonmembers of the tribe except where (1) nonmembers have

entered into consensual relationships with the tribe or its members or (2) when the nonmember's conduct threatens or has some direct effect on the political integrity, economic security or health or welfare of the tribe. Therefore, in any case in which criminal offenses are at issue, to assert jurisdiction over nonmembers, the burden would rest on the Tribe to establish one of the exceptions to Montana's general rule, Atkinson Trading Co. v. Shirley, 532 U.S. 645-654 (2001). Granted, the Tribe likely would easily meet the burden of demonstrating the second exception where criminal offenses are at issue.

The Quileute Family Code, which regulates the conduct of families, states that the "Quileute Tribe asserts its sovereignty to the greatest extent possible, while not inconsistent with tribal or federal law." The Quileute Family Code § 1.6. The Tribe, through this code, asserts that the Quileute Family Court has jurisdiction over "any juvenile domiciled or residing on the Quileute Reservation and any juvenile who has committed an act that occurred within the geographic jurisdiction of the Quileute Tribe." Id. § 3.2. It goes on to assert jurisdiction "over any Indian juvenile offender who has committed an act within the exterior boundaries of the Quileute Reservation, when such act would constitute a crime under the Quileute Law and Order Code if committed by an adult." Id. § 3.3. The Court asserts "civil jurisdiction over both Indian and non-Indian adults in aid of its powers under this Code to the fullest extent allowed by tribal law and federal law and may make such orders as are necessary and in the best interests of any child in the care and/or custody of such adult(s)." As written, this statute is consistent with existing law because it qualifies the Tribe's jurisdiction. Although the penalties addressed in the Family Code appear to be limited to civil penalties, the same cautions explained above with respect to the assertion of jurisdiction apply here. The Tribe may have some difficulty enforcing the provisions of the Family Code in cases involving incidents occurring on non-Indian fee and or in cases in which action is brought against non-Indians or Indians who are not members of the Tribe.

This office does not find any reasons to rescind the Superintendent's approval of May 20, 2011; therefore, the Resolution No. 2011-A-28 Quileute Family Code ordinance is effective as of this date. Please advise the Tribe of our comments and action. If you have any further questions, please contact Betty Scissons, Tribal Government Specialist, at (503) 231-6723.

Acting

A handwritten signature in black ink, consisting of several overlapping loops and a trailing line, positioned to the right of the word "Acting".