

TITLE 8
LUMMI NATION CODE OF LAWS
CHILDREN'S CODE

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**TITLE 8
LUMMI NATION CODE OF LAWS
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Chapter 8.01 General Provisions

8.01.001 Declaration of Children's Rights

The Lummi Nation declares that its children are its highest priority. With the goal of providing each child the environment needed to become a strong and healthy member of the community, the Nation further declares that each child has the following rights:

- (a) to receive love, attention, and emotional support from the family and from the community;
- (b) to live in a home and community free of alcohol and drug abuse;
- (c) to be protected from violence in the home;
- (d) to be protected from inappropriate touching, including sexual abuse;
- (e) to receive good nutrition, shelter, and health care;
- (f) to receive an education;
- (g) to learn the available culture, traditions, and history of the Nation;
- (h) to have good role models and to receive assistance to become a good role model; and
- (i) to learn about the child's responsibilities towards the family and the community through the setting of boundaries for appropriate conduct.

8.01.005 Purpose

This Code shall be liberally construed to effectuate the following purposes:

- (a) To provide the care, protection, and wholesome moral, mental, emotional and physical development of children.
- (b) Consistent with the protection of the public interest, to remove from delinquent children the taint of criminality and to substitute therefore a

program of treatment, education, accountability, training and rehabilitation.

(c) To achieve the foregoing purposes in a family environment wherever possible, separating the child from the child's parents only when necessary for the child's welfare or in the interest of public safety.

(d) To safeguard, protect and secure for each child coming under the jurisdiction of this Title, such care and guidance, preferably in the child's own home or community, as will serve the emotional, mental, and physical welfare of the child and the best interests of the Lummi Nation.

8.01.010 Definitions

For purposes of this Title, unless otherwise provided in this Title,

(a) a "child" is a person under the age of 18 who has not been emancipated, except that a person under 18 who while emancipated has committed a crime will be treated as a child unless the provisions of 8.03.020 apply;

(b) an "Indian child" under this Title, is a child who is: (1) a member of or eligible for membership in a federally recognized Indian Tribe; (2) a descendent of an enrolled member of the Lummi Nation or (3) is otherwise considered to be a member of the Lummi Nation community;

(c) A "member of the Lummi Nation" under this Title and for the purposes of the Indian Child Welfare Act shall include:

- (1) a person enrolled or eligible for enrollment in the Lummi Nation under Title 34 of this Code;
- (2) a descendent of an enrolled member of the Lummi Nation; or
- (3) a person who is otherwise recognized as a member of the Lummi Nation community, as determined by the Lummi Child Protection Team.

Recognition of membership under either (2) or (3) of this paragraph does not grant the child enrollment member privileges as defined by the Lummi Nation Constitution or by Title 34 of this Code;

(d) a “parent” is the natural or adoptive parent of a child, but does not include a person whose parental rights to the child have been terminated nor an unwed father whose name is not on the birth certificate or whose paternity has not been attested to, acknowledged, or established;

(e) a “child protection worker” is a person designated by the tribe to investigate allegations that a child is in need of protection and to take temporary custody when necessary and to provide services to the child and the child’s family;

(f) “court” shall mean the Lummi Tribal Court, unless otherwise specified;

(g) “Lummi Child Protection Team” is defined by Section 8.05.015 of this Title.

8.01.020 Jurisdiction

For the purposes of this Title, the Tribal Court shall have jurisdiction over

(a) a child under the age of 18, wherever the child is domiciled, if:

(1) the child is an enrolled member of the Lummi Nation;

(2) the parent of the child is an enrolled member of the Lummi Nation;

(3) the child is one-quarter or more Lummi blood quantum; or

(4) the child is eligible for enrollment as a member of the Lummi Nation or would be eligible for enrollment if the child’s eligible parent were enrolled;

(b) an Indian child or member of the Lummi Nation under the age of 18 who is domiciled on the Lummi Reservation;

(c) a Indian child under the age of 18 who is not described in (a) or (b) of this Section, if Lummi

Children’s Services requests and neither parent object to Tribal Court jurisdiction;

(d) a person had met the definitions of a child above either as described in (a) – (c) and that person turned 18 during the pendency of the matter and the provisions of Sections 8.03.001 or 8.05.047(b) apply.

(e) a parent, guardian, or custodian of a child described in (a) - (c) of this Section.

8.01.030 Rights of Parties

The parties to proceedings under this Title shall have the following legal rights:

(a) The right to counsel through the Public Defender’s office for:

(1) children who are alleged to be delinquent under this Title;

(2) parents of children alleged to be children in need; and

(3) children in need or protection over the age of 13 who request representation. All other parties have the right to counsel at their own expense,

(b) The right to request the Court to issue subpoenas for witnesses or other persons necessary for the conduct of the hearing; and

(c) The right to introduce evidence, to be heard on their own behalf, and to examine witnesses.

(d) There is no right to a jury trial in court proceedings under this Title, except for a child remanded to trial as an adult under 8.03.020.

8.01.040 Agreements with Other Jurisdictions

Lummi Children’s Services may enter into agreements with service providers, child protection workers, law enforcement personnel, probation officers, and other officials in other jurisdictions in order to investigate allegations, share information, and obtain services for children and parents of children under this Title. No agreement may be entered into under this Section that would encumber the tribe financially unless the agreement is also approved by the Lummi Indian Business

Council.

8.01.050 Confidentiality of Records

(a) The court shall make and preserve a record of all proceedings under this Title. The records shall be confidential and not open to inspection except by the child, the child's counsel or Guardian ad litem, the child's parent, guardian, or legal custodian, court personnel designated by the court, child protection workers, Lummi Children Services the Tribal Prosecutor, tribal attorneys handling child protection cases, Lummi Victims of Crime, and any other person who is allowed access to the records either by consent or by order of the court based on a legitimate interest in the particular case or the work of the court.

(b) Law enforcement records concerning a child as the victim, suspect or defendant shall be confidential and not open to inspection except by law enforcement personnel, the child, the child's counsel or Guardian ad litem, the child's parent, guardian, or legal custodian, the defendant, the defendant's attorney, court personnel designated by the court, child protection workers, Lummi Children Services, the Tribal Prosecutor, tribal attorneys handling child protection cases, Lummi Victims of Crime, the Lummi Housing director and any other person who is allowed access to the records either by consent or by order of the court based on a legitimate interest in the particular case or the work of the court.

(c) Upon agreement to maintain the confidentiality of the records, court and law enforcement records concerning a child as a victim may be provided to:

- (1) a treatment provider providing treatment to the perpetrator or the child;
- (2) law enforcement agencies in other jurisdictions that are investigating allegations of abuse or neglect of a child, or crimes against a child in that jurisdiction by the same alleged perpetrator;
- (3) child protection agencies in other jurisdictions that are providing services to the alleged victim or the same alleged perpetrator; and

(4) organizations seeking to provide services for children in their care.

8.01.060 Severability

If any provision of this Title or its application to any person or circumstances is held invalid, the remainder of the Title or the application of the provisions to other persons or circumstances is not affected.

Chapter 8.02 Status of Juveniles

8.02.015 Age of Majority

Except as otherwise specifically provided by this Title, all persons shall be deemed and taken to be of full age for all purposes at the age of 18 years.

8.02.025 Contracts of Minors – Disaffirmance

Unless that child has been legally emancipated, a child is not bound by any contract made by the child unless it is a contract for necessities, such as food, medical care, or shelter. A child will be held to the child's contracts where, on account of the child's own misrepresentations as to the child's majority, the other party has good reason to believe the minor capable of contracting.

8.02.035 Civil Actions

Unless that child has been legally emancipated, a child may not bring a civil action in the court pursuant to Title 3 of this Code except by way of a parent, guardian or a guardian ad litem, to be appointed by a court judge upon application to the court. The provisions of 8.05.060 through 8.05.064 do not apply to this Section.

8.02.045 Liability for Acts

In the event that a minor shall do or cause damage to the person or property of another, the minor and such parent or other person having legal obligation for such minor shall be fully liable for the damage caused.

Chapter 8.03 Delinquent Children

8.03.001 Definition of Delinquent Child

A person is a delinquent child under this Title if the person is under the age of 19 years and, while under the age of 18:

(a) has committed an act which is a violation,

or which if done by an adult would constitute a violation, of a law or ordinance of the United States or this Code; or

(b) is beyond the reasonable and lawful control of the child's parents or other persons having the child's custody;

(c) whose behavior or condition is such as to endanger the child's own welfare or the welfare of others;

(d) has run away from home;

(e) is repeatedly absent from school without good cause; or

(f) violates any law or ordinances enacted by the Lummi Indian Business Council governing the actions of such children.

8.03.005 Temporary Custody of Child Alleged to be Delinquent

(a) As soon as practicable after taking a child alleged to be delinquent into custody, the police officer or other person taking the child shall notify the child's parents, guardian or other person responsible for the child that the child has been taken into custody, the reasons for taking the child into custody, and the name and telephone number of the entity which is managing the case. Until the person responsible for the child is notified, efforts to notify the person shall include telephone and personal contacts at the home or place of employment or other locations which the person is known to frequent with regularity. If notification cannot be provided to the responsible person, the notice shall be given to a member of the extended family of the responsible person.

(b) The police officer or other person taking the child into custody shall release the child to the parents or other responsible person, except in the following circumstances:

(1) when the court orders the child is not to be released;

(2) when an agency legally charged with the supervision of the child has notified a law enforcement agency that the child has run away from a court-ordered placement; or

(3) where it appears to the police officer that the welfare of the child or of others may be immediately endangered by the release;

(c) If a child taken into custody under this Section is not released, the police officer or other person taking the child into custody shall without unnecessary delay take the child:

(1) before the Tribal Court;

(2) to a facility or home designated by the Lummi Nation for the temporary placement of children alleged to be delinquent; or

(3) to the juvenile detention quarters designated by the tribe.

(d) Except when the child is taken in custody pursuant to an order of the court, the police officer or other person taking the child into custody shall promptly notify the court within regular hours the next day the court is open that a child has been taken into custody and shall as soon as possible thereafter file with the court a written report stating the child's name, age and address and the reason why the child was not released to the child's parents or guardian.

(e) A child must be released from temporary custody under this Section unless, by the end of the next day the court is open following the day when the child was taken into temporary custody, the court approves continued custody.

(f) Only children 14 years of age or older may be held in detention without prior approval of a court judge.

(g) No child, unless that child has been remanded as an adult under 8.03.020 of this Title, shall be held in an adult jail facility.

8.03.010 Procedure for Delinquent Children

The Lummi Nation may file a petition or complaint in the court alleging that a child has violated this Title. The court may conduct a preliminary inquiry to determine whether the interests of the child or the public require that further action be taken. In any petition alleging delinquency, a parent or legal guardian of the

child alleged to be delinquent may be made a party in the petition, or may be added at a later date. Upon the basis of the preliminary inquiry, the Court may:

(a) Make informal recommendations to the child and the child's parent or person having custody as are appropriate to the circumstances.

(b) Require the child and the child's parents or person having custody to appear for an informal hearing, where the court may hear and determine the case in a private and informal manner and may, in lieu of any punishment provided for in the code, place such juvenile under agreed conditions of conduct or under the supervision of a responsible person, institution, or organization selected by the court, under such provisions as the court may see fit.

(c) Direct the child and the child's parents or person having custody to appear in a formal hearing before the court.

(d) Remand the child under 8.03.020 to stand trial as an adult for the offense charged.

8.03.015 Parental Request For Court Supervision for Children In Need

Any custodial parent or guardian may submit an affidavit and request to the Lummi Nation to initiate a delinquency petition alleging that the child has committed a crime, has runaway repeatedly, has failed to attend school without good cause, or is otherwise beyond the control of his or her parent or guardian. Upon receiving such a petition, the court shall conduct the same inquiry as detailed in 8.03.010.

8.03.020 Remanding of Child to Trial as an Adult

A child may be required to stand trial in open court, receiving only such rights and punishment as a person eighteen years of age or older, if

(a) the child is at the time of remand, 16 years of age or older;

(b) the child has committed or is alleged to have committed a criminal violation or a violation of a tribal ordinance; and

(c) the court determines that handling the case

as a delinquency proceeding will not serve the best interests of the child or the public.

8.03.025 Truancy Unlawful

It shall be unlawful for any child over the age of 12 to fail to attend school without good cause. Any child found responsible for failing to attend school may be sentenced to detention for a period up to 15 days and a fine of no more than \$250. Failure to attend school shall include being in the school building but failing to attend appropriate class without good cause.

8.03.027 Consumption of Tobacco by a Minor Unlawful

It shall be unlawful for any child to possess or consume tobacco in any form, including, but not limited to chewing and smoking. Any child found consuming tobacco may be sentenced to detention for a period up to three days and a fine of no more than \$100.

8.03.030 Conducting the Hearing

Court hearings under this Chapter shall be closed hearings, unless the child, the child's parent, or person having custody otherwise requests. The general public shall be excluded and only such persons admitted as the Judge finds have a proper interest in the case or the work of the Court.

8.03.040 Disposition in Delinquency Cases

(a) After a fact finding hearing where the Court finds that the child is delinquent under 8.03.001, the Tribal Court shall enter an appropriate order directing the disposition to be made in the case. For the purpose of determining the proper disposition of the child after fact finding, the Court may receive testimony, reports or other material relating to the child's mental and physical health and social history. Rules excluding hearsay evidence do not apply.

(b) The Court may order any combination of the following:

(1) direct that the child be placed on probation or under protective supervision;

(2) direct that the child be placed in the legal custody of a relative, a person maintaining a foster home, or a group home approved by

the court;

(3) specify particular requirements to be observed during the probation period or protective supervision, including but not limited to restrictions on visitations or communications by the child's parents, restrictions on the child's associates and activities, and may require the child to report to an appointed counselor;

(4) order restitution for property taken, damaged or destroyed by the child as a condition of probation;

(5) order the child to perform acts that will be beneficial to the child or the community;

(6) place the child under the supervision of a responsible person, detention facility, institution or organization;

(7) take any other action deemed necessary, as may be beneficial for the child or the community.

(8) If a parent has been made a party to the matter, the Court may order the parent, parents or legal guardian to attend a hearing scheduled in the matter, to submit to recommended counseling, or to participate in any probation or other treatment program ordered by the court. The Court may enforce any of its orders issued pursuant to this Section by use of its contempt power. Additionally, the Tribal Prosecutor may initiate criminal proceedings for Disobedience to Lawful Orders of the Court.

(c) Instead of making a disposition under (a) of this Section, the Court may direct the juvenile to stand trial as an adult in open Court, as provided in this Chapter.

(d) Notwithstanding other provisions in Chapter 8.02, a child is bound to any contract that the child makes to comply with conditions of probation under this Section or with an informal resolution under this Chapter.

8.03.050 Termination of Tribal Court Jurisdiction over a Delinquent Child

The court's jurisdiction over a child brought before it under this Chapter continues until

whichever of the following occurs first:

(a) The court dismisses the child from court supervision;

(b) The child is remanded to be tried as an adult, unless the child, after remand, is not convicted; or

(c) The child reaches 19 years of age.

Chapter 8.04 School Truancy

8.04.015 Purpose

It is the paramount duty of the Lummi Nation to provide for the education of its children in basic academic subjects and to prepare them to function as productive and culturally knowledgeable members of the Tribe and the Lummi Community.

8.04.025 Definitions

(a) "Alternative Education Program" shall mean an individualized educational program described in a contract approved by the Superintendent or his designee or the appropriate authority of a non-Tribal school in Whatcom County. This shall include a GED program.

(b) "Child" shall mean a child who has turned age 5 by September 1 of that school year to the age of 18 years, whether or not emancipated who is a member of the Lummi Nation, who resides within the Lummi Reservation, or who is enrolled in the Lummi Tribal Schools.

(c) "Home School Program" shall mean an individualized educational program described in a contract approved by the Superintendent or his designee or the appropriate authority of a non-Tribal school in Whatcom County.

(d) "School" shall mean the Lummi Tribal Schools, or any school within Whatcom County which has enrolled a Lummi child or a child residing on the Lummi Reservation or an Alternative Education Program.

(e) "Superintendent" shall mean the Lummi Superintendent of Education.

(f) "Truancy Officer" shall mean the person

designated by the Tribal Court or the Reservation Attorney's Office to enforce the provisions of this Code in court actions.

8.04.035 Compulsory School Attendance

(a) Every child shall attend school daily from Monday through Friday during normal hours that school is in session unless:

- (1) the child's absence is excused pursuant to school policies; or
- (2) the child is participating in an approved school function or is in a Home School or an Alternative Education Program; or
- (3) the child has a high school diploma, GED, or equivalent.

(b) The Superintendent shall be responsible for informing the students and the parents of the students enrolled in the Lummi Tribal Schools about the compulsory education requirements of this Chapter. This information shall be distributed at least annually.

(c) Any individual concerned about a child's school attendance may report the details of his or her concern to the Superintendent or his designee, to an Officer of Lummi Nation Police Department, or to the Truancy Office.

(d) It shall be the duty of the Superintendent to create a system to track attendance for the Tribal School and to forward the information of those students and parents who violate the school's attendance policy to the Lummi Nation Police Department and the Truancy Officer.

(e) It shall be the duty of Lummi Nation Police Department officers who observe a child not in school during normal school hours to determine the status of that child and whether the child is absent from school without good cause as defined in sub-section (a).

(f) Upon receipt of a report concerning a child's school attendance, it shall be the duty of the individual receiving the report to investigate the facts and circumstances of the

report and to make a written report to the Truancy Officer.

(g) The Truancy Officer shall determine whether sufficient facts exist to file a petition against the parent and/or the child under this Chapter, to refer the matter to the Tribal Court's Community Panel program, or to file a petition with the Tribal Court pursuant to Chapter 8.03. In either case, the Truancy Officer shall give notice of the referral to the child and his parent or person having custody. If a parent or person having custody cannot be found, the Truancy Officer shall notify one or more relatives of the child whose names and addresses shall be provided to the Truancy Officer by the Enrollment Office.

(h) The Tribal Court may:

(1) make informal recommendations to the child and his parent or person having custody to ensure the child's regular attendance at school on a voluntary basis; or

(2) direct the child and his parent or person having custody to comply with specific requirements, established by the Court. These may include fines, community service, parenting classes, conferences with the public health nurse, supervision by probation, and other requirements designed to ensure the child's regular attendance at school.

(i) If the Truancy Officer determines that sufficient facts exist to form the basis of a criminal complaint against the parents under Section 5.06.020, the Truancy Officer may refer the matter to the Tribal Prosecutor.

(j) Nothing in this Section shall prevent the charging of a parent under Title 5 of this Code for failing to send a child to school, or a charging a child under Chapter 8.03 of this Title for failing to go to school.

Chapter 8.05 Children in Need of Protection

8.05.010 Definition of Child in Need of Protection

The term "child in need of protection" means a child

(a) who has no parent, guardian, or custodian available, willing, and/or capable to care for the child;

(b) who has suffered or is likely to suffer significant physical injury as the result of abuse or neglect;

(c) who has suffered, or is likely to suffer, significant emotional damage as the result of abuse or neglect;

(d) who has been sexually abused or sexually exploited as defined in the Lummi Code of Laws;

(e) who has committed a crime or engaged in activity which would constitute a crime if committed by an adult, as a result of parental pressure, guidance, approval or other conduct;

(f) who has not been provided adequate food, clothing, shelter, medical care, or education, or care and control by the child's parent, guardian, or custodian, which is necessary for the child's health, safety, or well-being, and the deprivation is not due to the lack of financial resources available to the parent, guardian, or other custodian;

(g) who has been placed at an unreasonable risk to the child's health or welfare by failure of the parent, guardian, or custodian to intervene to eliminate that risk when that person has or should have knowledge of the risk;

(h) who is born addicted or exposed to alcohol, a controlled substance, or any other drug harmful to the physical or mental welfare of the child;

(i) who has witnessed significant domestic violence and the child's parent, guardian or custodian has failed to eliminate the risk of the child witnessing that domestic violence when that person has or should have knowledge of that risk; or

(j) who has been beyond the reasonable the control of the parents or legal guardians, and acted in ways that placed the child's health and welfare at risk.

8.05.015 Child Protection Team

(a) The Child Protection Team consists of representatives from Lummi Child Protection Services, Lummi Children Services, Lummi schools, Lummi Headstart Program, Lummi Victims of Crime, Lummi Nation Police Department, Lummi Care, Public Health Nurse, Lummi Health Clinic, Lummi Youth Outreach, Lummi Juvenile Probation Office, Lummi Housing and other agencies that the Lummi Indian Business Council may later designate. The supervisor of Lummi Children Services shall chair the Child Protection Team. The Child Protection Team shall be able to make decisions based on decision of the majority of persons attending a meeting for which there has been notice.

(b) The Child Protection Team shall meet periodically to advise and consult

(1) on matters brought before it by members of the team or other tribal employees who provide services to children; and

(2) with social workers from other jurisdictions who are managing cases of children described in 8.01.020(a), (b) or (c) or who are otherwise considered members of the Lummi Indian community.

(c) The Child Protection Team shall:

(1) advise and consult in matters related to children in need of protection such as;

(A) whether a Lummi child is in danger of harm;

(B) whether a child in need of protection petition should be filed in Tribal Court; whether a child should be removed from the child's home either temporarily or on a longer basis;

(C) where a child should be placed if the child cannot be placed with a parent, with a preference to recommending the child be placed with a family member;

(D) whether the tribe should request transfer jurisdiction over a child dependency court proceeding from

another jurisdiction to Tribal Court; and

(E) recommend actions to social workers to promote the care of children.

(2) Identify available community resources, programs, and services;

(3) Promote cooperation, communication, and consistency between agencies;

(4) Provide a forum for debating what actions would best promote the well-being of Indian Children; and

(5) Assist in the development and implementation of plans to promote the long-term well-being of children and their families.

(d) For the purpose of Sections 8.01.010(c)(2) and (c)(3) of this Title, the Child Protection Team, or a person designated by the team, shall make the determination whether a child is otherwise considered a “member of the Lummi Nation” under the Indian Child Welfare Act. The team or its designee will also decide whether the tribe should attempt to intervene in a child dependency court proceeding in another jurisdiction involving a child who is not currently eligible for enrollment under Title 34 but is otherwise a member of the Lummi Nation. In making the decisions under this subsection, the team or its designee should consider the need to protect the descendents of the tribe and its tribal heritage, as well as the tribe’s available resources to provide services to a non-enrolled member. A determination under this Section does not effect the question whether a child is eligible for enrollment under Title 34 of this Code. The factors to be considered may include:

(1) whether the child lives on or off the reservation;

(2) whether the child lives with an enrolled member;

(3) the child’s connections with the Lummi Indian community;

(4) the amount of Lummi blood of the

child;

(5) the reasons the child is not currently eligible for enrollment;

(6) the resources of the Lummi Nation; and

(7) the need for intervention based on the actions of the state.

(e) Extended family is particularly important to Children in Need of Protection. A preference shall be given to placing a child with a family member, should the parents not be willing or able to care for the child. Additionally, extended family members may submit information, in writing, to CPT regarding their concerns about the welfare of the child.

8.05.017 Temporary Custody of Child Alleged to be in Need of Protection

(a) Upon an ex parte application by any person or by the Lummi Nation, the Tribal Court may order the child be taken into temporary custody upon a finding that probable cause exists to believe the minor is a child in need of protection and the conditions in which the child is found present an imminent danger to the child’s health, welfare or safety. The Tribal Court order may include:

(1) an authorization to enter specified premises to remove the child; and

(2) a direction to place the child in temporary custody pending a preliminary hearing.

(b) In the absence of a court order, a child in need of protection may only be taken into temporary custody if a law enforcement officer finds probable cause that:

(1) a failure to remove would place the child in danger of imminent and serious harm; or

(2) the child is in need of adult supervision and has no appropriate adult supervision.

(c) The person taking a child into custody under the provisions of this Section shall immediately contact the entity designated by

Lummi Children Services for placement of children, which shall specify an appropriate placement for the child. The person shall take the child to the specified placement.

(d) As soon as practicable after taking a child into custody, the law enforcement officer or child protection worker taking the child shall notify the child's parents, guardian or other person responsible for the child that the child has been taken into custody, the reasons for taking the child into custody, and the name and telephone number of the entity which is managing the case. Efforts to notify the responsible person shall include contacts at the home, place of employment, or other locations where the person is known to frequent with regularity. If notification cannot be provided to the responsible person, the notice shall be given to a member of the extended family of the responsible person.

(e) A child must be released from temporary custody under this Section unless, within seventy-two hours after a child has been taken into temporary custody, excluding weekends and judicial holidays, the Court approves continued custody. If, at the time of the Court hearing, the child's parents, guardian, or custodian have not been notified, the Court shall hear evidence as to the efforts to investigate the whereabouts and give notice to the parents, guardian, or legal custodian.

(f) The child shall be placed within reasonable proximity to the child's home, taking into account any special needs of the child. If a child cannot be returned home, the child shall be placed in the least restrictive setting which most closely approximates a family, and in which the child's special needs, if any, may be met.

(g) A child may not remain in temporary custody for more than 45 days without further order of the Court authorizing continued temporary custody.

8.05.020 Procedure to Find a Child in Need of Protection

The Lummi Nation may file a petition in the Court alleging that a child is in need of protection. The Court may also, at any time and in its discretion, convert a delinquency petition

into a petition to find a child in need of protection.

8.05.025 Summons

(a) Upon the receipt of a petition, the clerk of the Tribal Court shall issue a summons to the child, if the child is over 13 years old, and to the child's parents, guardian, or custodian. The summons shall require personal attendance before the Court at the stated time. A copy of the petition shall be attached to each summons.

(b) Service of the summons may be made by a law enforcement officer child protection worker, or any other person eighteen years of age or older.

8.05.030 Conducting a Hearing

(a) Hearings held under this Chapter shall be closed. Only such persons shall be admitted as the Tribal Court finds have a proper interest in the case or the work of the Court. The parties in a child in need of protection case shall be the child, the child's parents, custodians, or guardians, and the Lummi Nation. No other person may intervene or be granted the status of a party in such proceeding. Where parental rights have been relinquished or terminated, as provided in Chapter 8.07, the Court, in its discretion, may allow intervention or participation by such persons who in the Court's judgment have an appropriate and sufficient interest in the child's welfare.

(b) Within 45 days after the petition is filed, unless the Court finds good cause warrants a delay, the Tribal Court shall conduct a fact-finding hearing to determine whether a child is in need of protection under this Chapter. The Court's determination shall be supported by a preponderance of the evidence.

(c) If the Court determines that it is in the best interests of the child and does not violate the rights of a party, the Court may allow a child witness to testify by means of a videotape deposition, closed circuit television, or other appropriate method. A statement of a child under the age of 13 describing any act of sexual contact preformed with or on the child by another or describing any attempted act of sexual contact with or on the child by another, is admissible in evidence in a proceeding under this Chapter when the court finds that the time,

content, and circumstances of the statement provide sufficient indicia of reliability. A statement by a child under the age of 13 describing an act of physical abuse on that child by a person may also be admissible in evidence under this Chapter when the court finds that the time, content, and circumstances of the statement provide sufficient indicia of reliability. A statement may not be admitted under this paragraph unless the proponent of the statement makes known to the adverse party his intention to offer the statement and particulars of the statement sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to meet the statement.

8.05.040 Disposition after a Child is Found to Be in Need of Protection

If the Tribal Court finds that a child is in need of protection under this Chapter, the Court shall order a Child Protection Plan be entered for the child's future protection and well-being. The Court shall receive a proposed Child Protection Plan from the social worker assigned to the case. The Court shall receive testimony, reports or other material relating to the mental, physical and social history of the child, and the child's parent, guardian or custodian, as necessary for the purpose of determining proper disposition of the case. A Child Protection Plan may not extend beyond the date on which the child becomes 18 years old, unless the child enters into a voluntary placement plan after the child turns eighteen. The Child Protection Plan may include any of the following, giving due weight to the need to preserve the unity of the family whenever possible:

- (a) permit the child to remain with the child's parents, guardian, or custodian subject to those conditions and limitations the Court may prescribe, including the protective supervision of the child by a local social service agency or placement conditioned upon compliance with the Court's orders;
- (b) ordering removal of the child from the home of the parents, guardians or custodians and placement in tribal custody;
- (c) order the child and the child's parents, guardian or custodian to participate in counseling or other treatment program as

ordered by the Court;

(d) require action necessary for the protection and well-being of the child including but not limited to:

- (1) child support and/or restraining or no-contact orders;
- (2) evaluation and treatment (including involuntary residential treatment and drug testing) for substance abuse, mental illness, and/or emotional disturbance;
- (3) parenting classes;
- (4) mandatory school attendance;
- (5) visitation and communication orders;
- (6) any other services or activities for the benefit of the child and the family;
- (7) provide for any other culturally appropriate remedy which would properly address the issues found to have caused the minor to be in need of protection;
- (8) providing that failure to comply with a Child Protection Plan may be punished by contempt of court or a charge of Disobedience of Lawful Order of the Court under this Code;
- (9) require releases to be signed allowing for the monitoring of compliance with treatment, services and other court ordered activities;
- (10) Establishment of paternity, if in the best interests of the child;
- (11) Require maintaining a relationship between the child and the extended family to the extent that resources are reasonably available, unless maintaining that relationship would not benefit the child or would interrupt the child's re-unification with the parents.

8.05.045 Review

The status of all children subject to a Child In Need of Protection Order shall be reviewed by the Tribal Court at least every six months. The

first review following the Court's entry of the Child In Need of Protection Order shall be conducted within 90 days of entry. At each review, the Court will determine the party's progress on the Child Protection Plan and whether the Court will continue its supervision. Reviews may continued for good cause.

8.05.047 Closure of Case

A case under this Chapter shall be closed if:

- (a) The Court, after a fact-finding hearing, finds that the child is not in need of protection under the criteria of 8.05.010;
- (b) the child has reached 18 years of age or is earlier emancipated, except that a child who has reached the age of 18 may agree with the Tribe to continue in a foster placement or other residential facility until that child has reached the age of 21;
- (c) the child has been returned to the home of a parent, guardian, or custodian and the Court finds that no further monitoring is required;
- (d) the child has been placed in a permanent guardianship in a home approved by the Court; or
- (e) the child has been adopted into a home approved by the Court.

8.04.048 Concurrent Proceedings

Once a child has been found to be a Child in Need of Protection, no proceedings affecting the care of that child shall be entertained by the court unless the Lummi Nation is made a party to the action and agrees to the filing of the proceeding. The Lummi Nation may intervene in any case involving the welfare or interests of a child who has been found to be a Child in Need of Protection.

8.05.050 Obligations to Support Children

(a) The Court may require the parents, or other person legally obligated, to support a child found to be within the jurisdiction of the Court, and to pay toward that child's support such amounts and at such intervals as the Court may direct. The Court may order that a specified amount of the child's funds be used for the care

of the child and the child's needs, or both. The Court, in determining the amount of support to be paid, shall give due regard to the cost of maintaining the child, the financial resources of the parents, or other responsible person, and the other financial demands on the parents, or other person.

(b) Failure on the part of parents, or other person having control over a child, to comply with a lawful order of the Court under this Section may be grounds for charges for contempt of court, Disobedience to Lawful Orders of Court or Failure to Support Dependent Persons as provided in Title 5 of this Code.

8.05.055 Transfer of Jurisdiction

(a) The Child Protection Team or its designee, shall determine whether to seek transfer to the Tribal Court of a child protection case from another jurisdiction. The team shall consider:

- (1) the best interests of the child;
- (2) the best interests of the tribe;
- (3) centralized case management for all siblings in a family;
- (4) the availability of services to meet the needs of the child and the child's family; and
- (5) the prospects for permanent placement for the child.

(b) The Tribal Court may transfer any proceedings pending before it to another appropriate jurisdiction if it determines that the other jurisdiction has significant interest in the child and that transfer would be in the best interest of the child.

8.05.060 Guardian Ad Litem Authorized

In any action before the Court involving a child, under this Title, especially where the child has no assigned caseworker, at the request of any party or on the Tribal Court's own motion, the Court may appoint a qualified person to serve as guardian ad litem until further order of the Court. All such appointments shall be made only in accordance with the procedures of this Title.

8.05.061 Guardian Ad Litem Qualifications

A person serving as a guardian ad litem in any case in the Lummi Juvenile Court must have the following minimum qualifications:

- (a) an enrolled member of the Lummi Nation;
- (b) thorough knowledge of traditional Lummi child rearing and nurturing practices as well as thorough knowledge of Lummi Cultural values and practices;
- (c) no prior history of child abuse or as a perpetrator of domestic violence, and shall otherwise pass a background investigation;
- (d) guardian ad litem training prior to appointment, or such training within a reasonable time after appointment. The training shall cover the areas of child development, child abuse or neglect, abusive relationships, symptoms of abuse, the Indian Child Welfare Act, and this Code;
- (e) a demonstrated ability to exercise good judgment and discretion and the ability to work with others in stressful situations; and
- (f) such additional qualifications as the Court deems appropriate.

8.05.062 Guardian Ad Litem Appointments

When the Court or party suggests the need for a guardian ad litem, each party shall be given the opportunity to nominate a person meeting the qualifications of this Code, to interview all persons so nominated, and to question any person so nominated in open Court prior to the appointment. The Court shall exercise its discretion in making the appointment and may elect not to make the appointment.

8.05.063 Guardian Ad Litem Role

(a) The role of the guardian ad litem shall be to protect the right of the child to actively participate in her/his Indian heritage and culture, to be in a safe, nurturing environment, to maximize the child's relationship with her/his Indian family and extended family, and the tribal community at large.

(b) The guardian ad litem shall interview the child's parents, caregivers, caseworkers, therapists, and other significant figures in the child's life, and make recommendations to the Court. The guardian ad litem shall be available for questioning and cross examination by the Court and other parties in the case. The guardian ad litem shall advocate for the best interests of the child.

(c) The guardian ad litem shall maintain contact and communication with all parties in the case.

(d) The guardian ad litem shall not have the status of a party, but the child shall be entitled to a spokesperson to advocate for the child's interest as a party to the proceeding if the Court deems such representation necessary or desirable. The guardian ad litem shall have the right to select the spokesperson for the child, subject to approval of the Court.

8.05.064 Roster of Guardians Ad Litem

The Court shall maintain a roster of persons who wish to serve as guardian ad litem or who have been determined by the Court to be qualified as guardian ad litem. Lummi Children's Services shall provide training to persons wishing to be appointed as guardian ad litem or who have been so appointed.

Chapter 8.06 Neglected and Abused Children – Sanctions and Reporting

8.06.010 Declaration of Purpose

The Lummi Nation acting through the Lummi Indian Business Council finds and declares that the relationship and bond between parents and their children is of paramount importance to the future of the family and to the future of the Lummi Indian Tribe. However, there are occasionally instances where non-accidental injury, neglect, death, sexual abuse, and cruelty to children have occurred by their parents, custodians, or guardians, and in those situations where a child is deprived of the child's right to minimal conditions of safety, health, and nurture, the Nation is justified in intervening on behalf of the child to preserve and protect those rights of the child. It is for these reasons that the Lummi Indian Business Council has enacted this Chapter of the Lummi Code of Laws to be known as the Child Abuse and Neglect Law.

8.06.030 Child Abuse and Neglect Unlawful

(a) A person who cares for or is legally responsible for a child, and who recklessly abuses or neglects that child is guilty of child abuse or neglect and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 365 days and a fine not to exceed \$5,000.

(b) For the purposes of this Section, “child abuse and neglect” means an act or omission that create a danger to a child’s health, welfare, or safety. This Section shall not be construed to prohibit reasonable parental discipline unless such discipline is proved to be injurious to the child’s health, welfare and safety. Child abuse or neglect includes:

(1) infliction of bodily injury, unreasonable confinement, intimidation, emotional abuse or cruel punishment of a child that results in physical pain or mental anguish;

(2) failing to provide adequate food, clothing, shelter, medical care, or education that is necessary for the child’s health, safety, or well-being, and the deprivation is not due to the lack of financial resource available to the parent, guardian or other custodian;

(3) failing to protect the child from observing acts of domestic violence; and

(4) placing a child at an unreasonable risk to the child’s health or welfare by failure of the parent, guardian or custodian to intervene to eliminate that risk when that person has or should have knowledge of the risk.

(c) Nothing in this Section precludes a prosecution under Title 5 if a crime has been committed under that Title, nor limits the application of other provisions under this Title for the protection of a child.

8.06.040 Reports

Whenever any person involved in the delivery of any health or social service on the Lummi Reservation, including but not limited to social workers, education workers, community health representatives, doctors, nurses, psychologists, psychiatrists, and counselors, or any police

officer or other law enforcement officer, shall have reasonable cause to believe that a child has suffered child abuse or neglect, the person shall immediately report such incidence or cause a report to be made to the entity specified by Lummi Children’s Services. Any other person who has reasonable cause to believe that a child has suffered child abuse or neglect may also report such incident to the proper law enforcement agency or to the entity specified by Lummi Children’s Services. In all cases where a report is required an immediate oral report shall be made by telephone or otherwise and, upon request, shall be followed by a report in writing. Such report shall contain the following information, if known and applicable:

(a) Name, address, and age of the child;

(b) The name and address of the child’s parents and other persons having custody of the child or being legally responsible for the child;

(c) The nature and extent of the child’s injury or injuries, if any;

(d) The nature and extent of the neglect of the child, if any;

(e) The nature and extent of the sexual abuse of the child, if any;

(f) Any evidence of previous injuries, including their nature and extent;

(g) Any other information which may be helpful in establishing the cause of the child’s death, injury, or injuries, and the identity of the perpetrator or perpetrators.

8.06.050 Immunity for Civil or Criminal Liability

Any person participating in good faith in the making of a report pursuant to this Chapter or testifying as to the alleged child abuse or neglect in a judicial proceeding under this Title shall, in so doing, be immune from any liability arising out of such reporting or testifying under any law of the Lummi Nation. Any report conforming with the reporting requirements of this Chapter shall not be deemed a violation of any confidential communication privilege by which the reporting individual might otherwise be bound, except that no attorney shall be

required to divulge information which the attorney shall have obtained in a confidential communication from the attorney's client over the objection of the client.

8.06.070 Violations

Any person having a duty to make a report under this Chapter who shall fail, neglect, or refuse to make such report shall be guilty of an offense and fined not more than \$500 and imprisoned not more than ten days.

Chapter 8.07 Termination of Parental Rights

8.07.010 Purpose

Parental rights to a child may be terminated by the Tribal Court according to the procedures in this Chapter.

8.07.015 Summons and Petition

Proceedings to terminate parental rights shall be instituted by a petition which may be filed by the Lummi Nation or by a parent, guardian, or custodian of the child. The parents, the child over the age of 13, and the Lummi Nation, through the Office of the Reservation Attorney, shall be served with a copy of the petition and a summons in conformity with Title 3 of this Code.

8.07.020 Petition

The petition shall state:

- (a) The name, birthdate and residence of the child and tribal affiliation;
- (b) The names and residences of the child's parent(s), guardian or custodian;
- (c) If the child is in detention or shelter care, the location and the length of time at such location;
- (d) A brief statement of the facts and reasons supporting the request that parental rights be terminated.

8.07.030 Setting of Hearing

After service of the petition and summons is complete, the parties may request a hearing date from the clerk of the court and provide notice to the parties. The hearing may be continued upon motion of any party to the hearing for good

cause shown.

8.07.040 Pre-termination Report

Upon the filing of the petition, the Lummi Children's Services a guardian ad litem, or any other qualified person appointed by the court shall begin the preparation of a pre-termination report. In preparing the report the caseworker shall consult with the child's parents, guardian, or custodian and all social services, health, and education personnel who have had prior professional contacts with the child and the child's parent(s), guardian or other custodian to determine whether termination of parental rights would be in the best interests of the child. The caseworker may also review any of the child's previous court records. The pre-termination report shall be in writing and contain the professional opinions of all personnel consulted. The report shall be presented to the Tribal Court at least five working days prior to the termination hearing.

8.07.060 Termination Hearing

Hearings held under this Chapter shall be closed. Only such persons shall be admitted as the Court finds have a proper interest in the case or the work of the Court. The parties shall be the child, the child's parents, and the Lummi Nation. No other person may intervene or be granted the status of a party.

8.07.080 Termination - Proof

(a) Upon petition by Lummi Children Services and without hearing, the Tribal Court may terminate parental rights of:

- (1) a parent who gives consent under this Chapter; and
- (2) a father whose name does not appear on the birth certificate and who has not acknowledged or established paternity under 11.05 of this Code, provided, however that identified putative fathers are given notice of the proceeding at least 30 days prior to the any action taken by the court.

(b) Upon petition by Lummi Family Services, the Tribal Court may terminate the parental rights of one or both parent subsequent to a finding that the parent has abandoned the child. A presumption exists that the parental

relationship has been broken if the parent has not contacted or financially supported the child for 12 consecutive months or has only had marginal contacts in 24 of the most recent 48 months. The burden shall then be on the parent to prove that the parental relationship has not been broken.

(c) The Court may terminate the parental rights of one or both parent subsequent to a finding that the child is in need of protection in accordance with Chapter 8.05 and which is supported by clear and convincing evidence of the following:

(1) The Court has entered an order stating what the parent was required to accomplish in order to obtain return of the child, but that the parent has failed within a reasonable period of time to accomplish those things;

(2) There is a substantial probability of future abuse or neglect if the child were returned to the parent;

(3) The conditions which cause the child to meet the definition of a child in need of protection under 8.05.010 because of conduct by the parent are unlikely to improve within a reasonable period of time; and

(4) Under no reasonable circumstances can the welfare of the child be served by the continuation of the parent-child relationship and that termination of parental rights will be in the child's best interest.

(d) Upon petition by a parent, the Tribal Court may terminate the parental rights of the other parent as part of the adoption by the child's step-parent if the Court finds that:

(1) the other parent has abandoned the child as described in (b) of this Section; or

(2) clear and convincing evidence supports a finding that the child meets the definition of a child in need of protection under 8.05.010 because of conduct by the other parent and findings under (c)(2) - (4) of this Section as to that parent.

(e) Upon petition of a guardian or custodian, as part of the adoption by the guardian or

custodian, if the Court finds:

(1) the parent has abandoned the child as described in (b) of this Section; or

(2) clear and convincing evidence supports a finding that the child meets the definition of a child in need of protection under 8.05.010 because of conduct by the parent and findings under (c)(2) - (4) of this Section as to the parent.

8.07.090 Consent

Consent of a parent to terminate parental rights is not valid unless executed in writing and recorded before a Judge and accompanied by the Judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood. Any consent given prior to or within 30 days of the birth of the child is invalid. Any consent may be withdrawn prior to the entry of the final decree of termination.

8.07.100 Dispositional Alternatives

(a) If parental rights to a child are terminated the Court may:

(1) proceed to the Adoption Chapter of this Title where appropriate;

(2) grant custody to the remaining parent whose parental rights have not been terminated; or

(3) grant custody to the tribe for placement in a foster or shelter care facility that has been approved by the Tribe.

(b) If parental rights to a child are not terminated, the Court shall make a disposition in accordance with the provisions of this Title regarding a child in need of protection.

8.07.110 Enrollment Status Unaffected

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

8.07.120 Termination Order Is Final

The termination order constitutes a final order for purposes of appeal.

Chapter 8.08 Adoptions

8.08.010 Personal Jurisdiction

The Tribal Court shall have personal jurisdiction for purposes of adoption

- (a) as provided under 8.01.015; and
- (b) over any person adopting an Indian child under the jurisdiction of the Tribal Court.

8.08.020 Petition

Any person 21 years or older wishing to adopt a child shall file a petition with the Tribal Court. A petition filed by a married person shall also be signed by the married person's spouse unless it is shown that the spouse's whereabouts are unknown. The petition shall be signed and notarized and include:

- (a) The sex, date of birth, residence and Indian status of the child;
- (b) The full name to be given to the child to be adopted;
- (c) The name, age, place and duration of residence and the Indian status of the petitioner;
- (d) As to each parent of the child, proof of parental consent to the adoption; that the parent is deceased; that the parent's name does not appear on the birth certificate and the parent has not acknowledged or established paternity under 11.05 of this Code; or, if the parent has not consented to the adoption either, of the termination of the parent's parental rights or a permanent modification of the parents' parental rights;
- (e) The reasons the petitioner desires to adopt the child; and
- (f) The proposed inheritance guidelines for the child both from the adoptive parent and the biological parent.

8.08.030 Consent to Adoption

A parent's consent to adoption is not valid unless executed in writing and recorded before a Tribal Court Judge and accompanied by the Judge's certificate that the terms and consequences of the consent were fully

explained in detail and fully understood. Any consent prior to or within 30 days of the birth of the child is invalid. Any consent may be withdrawn prior to the entry of the final Decree of Adoption; provided, however, that if within six months from the date of consent it can be shown beyond a reasonable doubt that the consent to adoption was given as a result of fraud, coercion or duress, such consent may be withdrawn during such period.

8.08.040 Pre-Adoption Report

(a) Upon the filing of a Petition for Adoption, the Tribal Court shall notify and appoint Lummi Children's Services, a guardian ad litem or other qualified person to make an investigation.

(b) A written report shall be filed with the Tribal Court within 45 days of the time of the appointment unless further time is granted by the Court.

(c) The report shall state why the proposed adoption is in the best interests of the child and contain all available information concerning:

- (1) the physical and mental condition of the child, the petitioner and the petitioner's family;
- (2) the parent(s) of the child;
- (3) the home environment, family life, health facilities and resources of the petitioners;
- (4) the child's cultural heritage and Indian status;
- (5) the marital status of the petitioner, if married, and divorce, if any. The names and ages of other children, both natural and adopted of the petitioner; and
- (6) any other facts and circumstances relating to the propriety and advisability of the adoption.

8.08.050 Notice

After the Petition for Adoption is filed, the Tribal Court clerk shall fix a time and place for a hearing on the petition which shall be not less than 60 days from the date of the filing of the petition. Notice of the Hearing shall be given by the court clerk to the petitioner(s), the child's

parent(s) if parental rights have not been terminated, the Lummi Nation, through the Office of the Reservation Attorney, and any other person the Tribal Court believes necessary for the proper adjudication of the petition. Notice shall be delivered personally by a tribal law enforcement officer or appointee of the Tribal Court. If the notice cannot be delivered personally it shall be delivered by certified mail. Upon a showing to the Tribal Court that diligent efforts were made to serve the notice on the child's parent(s), and that for sufficient reasons notice could not be made, the Tribal Court may allow notice to be made by publication, pursuant the publication provisions in Title 3 of this Code. The published notice shall identify the child only by initials.

8.08.060 Adoption Hearing

(a) The petitioner(s) and adoptive child shall appear personally at the hearing unless excused by the Tribal Court for good cause shown. If the Tribal Court is satisfied as to the suitability of the child for adoption, the financial ability and moral and physical fitness and responsibility of the petitioner(s) and that the best interests of the child will be promoted by the adoption, it may:

- (1) enter a final Decree of Adoption; or
- (2) place the child in the legal custody of the petitioner(s) for a period of not more than nine months prior to entering a final Decree of Adoption.

(b) If the Court is not satisfied that the adoption will be in the best interests of the child, the petition shall be denied and the child's guardian or custodian instructed to arrange suitable care for the child.

(c) The Court may continue the hearing to permit further observation, investigation or consideration of any facts or circumstances affecting the granting of the petition.

(d) If the child is 12 years of age or older, the child's wishes regarding the proposed adoption shall be considered by the Tribal Court.

(e) The Court shall make every effort, consistent with the best interests of the child, to adhere to the following priorities of adoptive families considered:

- (1) Extended family members;
- (2) Tribal members of the child's tribe;
- (3) Other Indians;
- (4) Non-Indians who are sensitive to and willing to encourage and maintain the child's cultural heritage and contact with the child's tribe.

(f) The Court shall give preference to making an adoption open to avoid permanently depriving the child of connections to, or knowledge of, the child's natural family. Under an open adoption, the parents and members of the child's natural extended family shall have a right of reasonable visitation and communication with the child unless restricted by the Court.

8.08.070 Provisional Placement Pursuant to Final Decree of Adoption

If the Court does not enter a final Decree of Adoption but places the child in the legal custody of the petitioner(s), a qualified individual from Lummi Children's Services shall file a supplementary written report as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parents within the next 60 days. If the Court is satisfied that the interests of the child are best served by the proposed adoption, a final Decree of Adoption may be entered.

8.08.080 Final Decree of Adoption

The final Decree of Adoption shall include such facts as are necessary to establish that the child is eligible and suitable for adoption, and that the adoptive home and parents are adequate and capable of the proper care of the child. The adoption decree must address inheritance issues. Within five days after the final Decree of Adoption has been entered by the Court, the Bureau of Vital Statistics of Washington State and the Bureau of Indian Affairs shall be notified by the court clerk that the adoption has taken place. The court clerk shall supply both agencies with all necessary information as well as a copy of the final Decree of Adoption for their records. If the child was born in a state other than Washington, the adoptive parents must provide the clerk of the court with

information and reporting documents regarding changing the birth certificate of that state. Within five days of receiving such reporting documents, the clerk of the court shall provide assistance to ensure notification of that state that an adoption has occurred.

8.08.090 Adoption Records

All records, reports, proceedings and orders in adoption cases are confidential and shall not be available for release or inspection. Information contained in such records may be released upon petition to the Tribal Court by the adoptive person after reaching legal majority, or otherwise upon order of the Tribal Court upon good cause shown.

Chapter 8.09 Guardianship of Children

8.09.015 Personal Jurisdiction

The Tribal Court shall have personal jurisdiction for purposes of guardianship

- (a) as provided under 8.01.020; and
- (b) over any person who becomes a guardian under the jurisdiction of the Tribal Court.

8.09.025 Powers and Duties of Guardian

(a) The guardian of a child has the following powers:

- (1) to have custody and control of the child;
- (2) to enroll the child in school and obtain school records;
- (3) to authorize medical and mental health care for the child and obtain medical and mental health records;
- (4) to receive property or money under the terms of any statutory or insurance system, contract, will, or court order and apply the money and property for support, care, and education of the ward; however, the guardian may not apply the child's money or property to recompense for services as the guardian; and
- (5) to provide consents that would otherwise be provided by the child's

parents.

(b) The guardian of a child has the following duties during the period of the guardianship:

- (1) to provide for the child's health, care, education, food, shelter, clothing, and protection;
- (2) to conserve the child's property;
- (3) to allow the parents and the child's extended family reasonable visitation and communication unless determined inappropriate by the Court;
- (4) Provide the Court and Lummi Children's Services with the children's current address at all times;
- (5) not permanently remove the children from the county in which they lived at the initiation of the guardianship without approval of the Court;
- (6) notify the Court and Lummi Children's Services immediately in the event of circumstances seriously affecting the welfare of the child, such as any life threatening circumstances or major medical problems likely to affect the child's welfare;
- (7) notify the Court and Lummi Children's Services of a proposed change in who is caring for the child;
- (8) provide information upon request to the Court or Lummi Children's Services regarding the child's safety and welfare; and
- (9) appear at hearings reviewing the guardianship as scheduled by the Court and report on the child as required under 8.09.045; and
- (10) obey any orders entered by the Court at the time of the establishment of the guardianship and at any subsequent reviews of the guardianship.

8.09.030 Commencement of Guardianship Action

Any person wishing to become a guardian of a child shall file a petition with the Tribal Court. The parents, the child over the age of 13, and the Lummi Nation, through the Office of the Reservation Attorney, shall be served with a copy of the petition and a summons in conformity with Title 3 of the Code.

8.09.035 Petition

The petition shall be signed and notarized and include:

- (a) The name, sex, date of birth, residence and Indian status of the child;
- (b) The name, age, place and duration of residence and the Indian status of the petitioner;
- (c) The name and address of the person or agency having legal or temporary custody of the child;
- (d) The relationship between the child and the petitioner;
- (e) The status of each parent as to that parent’s ability to care for the child; and
- (f) a description and estimate of value of all property in which the child has an interest.

If the child is a ward of the court, no petition for guardianship may be filed unless the Lummi Nation has approved of the petition.

8.09.045 Guardianship Report

(a) Upon the filing of a Guardianship Petition, the Tribal Court shall notify and appoint Lummi Children’s Services or other qualified person to make an investigation.

(b) A written report shall be filed with the Court within 45 days of the time of the appointment unless further time is granted by the Court.

(c) The report shall contain all pertinent information necessary to assist the court in determining the best interests of the child, including:

- (1) the physical and mental condition, and

the cultural heritage and Indian status, of the child, the petitioner, and the petitioner’s family;

(2) The status of each parent as to that parent’s ability to care for the child;

(3) the home environment, family life, and resources of the petitioners;

(4) the family status of the petitioner, including names and ages of other children, martial status, and previous marriages; and

(5) any other facts and circumstances relating to the propriety and advisability of the guardianship.

8.09.055 Notice

After service of the summons and the Petition for Guardianship is complete, the parties may request a hearing date from the Tribal Court clerk, and provide notice of that date to the other parties.

8.09.065 Establishment of Guardianship

(a) The petitioner(s) and child, if age 12 or older, shall appear personally at the hearing to establish the guardianship unless excused by the Court for good cause shown.

(b) Before establishing a guardianship, the Court must determine that clear and convincing evidence supports a finding that:

(1) the child’s parents have consented to the guardianship;

(2) there is not a parent available and willing to care for the child; or

(3) if there is a parent available and willing to care for the child.

(A) the child meets the definition of a child in need of protection under 8.05.010 because of conduct by the parent;

(B) there is a substantial probability of future abuse or neglect if the child were returned to the parent;

(C) the conditions that lead to the finding

under (b)(3)(A) of this Section are unlikely to improve within a reasonable period of time.

(c) If the child is 12 years of age or older, the child's wishes regarding the proposed guardianship shall be considered by the Court.

(d) If the Tribal Court is satisfied as to the suitability of the guardianship, it may

(1) enter an order granting a permanent guardianship under such terms or conditions that the court finds appropriate;

(2) enter an order granting a temporary guardianship for a stated period under such terms or conditions that the court finds appropriate;

(3) enter an order granting a guardianship supervised by Lummi Children's Services under such terms or conditions that the court finds appropriate and reviewed by the court at intervals it establishes not to exceed one year;

(4) order that the parents pay to the guardian child support in such amounts and at such intervals as the Court may direct.

(e) The term of the guardianship expires when the child reaches the age of 18 or the guardianship is terminated by order of the Court.

8.09.075 Review of Guardianship

(a) The Court shall have continuing jurisdiction over guardianship cases and may conduct periodic reviews of the guardianship. The Court shall provide notice of the review to the guardian, the child, if age 14 or older, and the Lummi Nation.

(b) At the review hearing, the guardian shall report on:

(1) the welfare of the child

(2) the expenditure and use of any of the child's assets or income;

(3) the child's health;

(4) the child's school arrangements, attendance, and progress; and

(5) the child's contacts, if any, with the child's parents and extended family.

(c) At the conclusion of the review hearing, the Court may enter appropriate orders including terminating the guardianship, re-installing a Child in Need of Protection case, or other orders designed to protect the well-being of the child.

Chapter 8.10 Emancipation

8.10.050 Declaration of Emancipation

Any minor who is 16 years of age or older, under the jurisdiction of this court and living on the reservation may petition in Tribal Court for a declaration of emancipation.

8.10.010 Petition for Emancipation

(a) A petition for emancipation shall be signed and verified by the petitioner, and shall include the following information:

(1) The full name of the petitioner, the petitioner's birth date, and the state and county of birth;

(2) a certified copy of the petitioner's birth certificate;

(3) the name and last known address of the petitioner's parent or parents, guardian, or custodian;

(4) the petitioner's present address, and length of residence at that address;

(5) a declaration by the petitioner indicating that he or she has the ability to manage his or her financial affairs, including any supporting information; and

(6) a declaration by the petitioner indicating that he or she has the ability to manage his or her personal, social, educational, and nonfinancial affairs, including any supporting information.

8.10.015 Service of Petition -- Notice -- Date of Hearing

The petitioner shall serve a copy of the filed petition and notice of hearing on the petitioner’s parent or parents, guardian, or custodian at least 15 days before the emancipation hearing. The notice shall be served in accordance the summons service procedure in Title 3 of this Code. The notice shall contain the following language: “The above captioned minor has filed a petition for emancipation in Lummi Tribal Court. The matter is set for hearing on [date] and [time] at the Lummi Tribal Courthouse, 2616 Kwina Road, Bellingham, WA. As a parent or legal guardian of the minor, you have the right to appear at that time. No petition for emancipation shall be granted if a parent or legal guardian objects. If you fail to appear at the appointed time or otherwise file an objection with this court, the emancipation petition may be granted, and the minor child will become legally an adult.”

8.10.020 Hearing on Emancipation

The hearing on the petition shall be before a tribal judge. Prior to the presentation of proof the court shall determine whether:

- (a) The petitioning minor understands the consequences of the petition regarding his or her legal rights and responsibilities;
- (b) an investigation should be made by Lummi Children Services or another qualified person regarding the allegations of the petition and file a report with the Court.

8.10.025 Emancipation Decree -- Certified Copy -- Notation of Emancipated Status

(a) The Court shall grant the petition for emancipation, except as provided in subsection (b) of this Section, if the petitioner proves the following facts by clear and convincing evidence:

- (1) That the petitioner is 16 years of age or older;
- (2) that the petitioner is a resident of the state;

(3) that the petitioner has the ability to manage his or her financial affairs; and that the petitioner has the ability to manage his or her personal, social, educational, and nonfinancial affairs.

A parent, guardian, custodian, or in the case of a dependent minor, the Lummi Nation may oppose the petition for emancipation. The court shall deny the petition if a custodial parent, guardian or custodian opposes the petition.

(c) Upon entry of a decree of emancipation by the court the petitioner shall be given a certified copy of the decree.

8.10.030 Power and Capacity of Emancipated Minor

(a) An emancipated minor shall be considered to have the power and capacity of an adult, except as provided in subsection (b) of this Section. A minor shall be considered emancipated for the purposes of, but not limited to:

- (1) The termination of parental obligations of financial support, care, supervision, and any other obligation the parent may have by virtue of the parent-child relationship, including obligations imposed because of marital dissolution;
- (2) The right to sue or be sued in his or her own name;
- (3) The right to retain his or her own earnings;
- (4) The right to establish a separate residence or domicile;
- (5) The right to enter into nonvoidable contracts;
- (6) The right to act autonomously, and with the power and capacity of an adult, in all business relationships, including but not limited to property transactions;
- (7) The right to work, and earn a living, subject only to the health and safety regulations designed to protect those under age of majority regardless of their legal

status; and

(8) The right to give informed consent for receiving health care services.

(b) An emancipated minor shall not be considered an adult for the purposes of the adult criminal laws of the Lummi Nation unless the Court remands the emancipated minor to be tried as an adult pursuant to Chapter 8.03 of this Code.

**8.10.035 Declaration of Emancipation
-- Voidable**

A declaration of emancipation obtained by fraud is voidable. The voiding of any such declaration shall not affect any obligations, rights, or interests that arose during the period the declaration was in effect.

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