

TITLE 4 - DOMESTIC RELATIONS

CHAPTER 4-4 JUVENILE DEPENDENCY

4-4-1 Policy and Purpose

(a) The Tribal Council declares that it is the policy of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians (Tribes) to assure the future of the Tribes by establishing this chapter to protect the best interests of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians' children, to preserve the stability of the family and to protect the Tribes, its customs and culture.

(b) It shall be the purpose of this chapter to:

- (1) Provide for the welfare, care and protection of children;
- (2) Protect the best interests of children by preserving the unity of the family and to achieve the purposes of this act in a family environment whenever possible;
- (3) Protect and strengthen the cultural ties and ethnic identity of tribal children in general to the maximum extent possible;
- (4) Compel the parent or custodian of a child to provide the proper care, guidance and control to help the child develop into a well-adjusted, responsible adult, and to facilitate the changes needed in the home environment to ensure the child's safety, health and development;
- (5) Secure to each child removed from his or her home the care, guidance, and control as nearly equivalent as practicable to that which the child should have been given by his parent or custodian to help him develop into a well-adjusted, responsible adult;
- (6) Protect from and prevent as much as possible child abuse, neglect and abandonment;
- (7) Provide judicial and other procedures through which the provisions of this Code are executed and enforced, and in which the parties are assured a fair hearing and their civil and legal rights are recognized.

4-4-2 Definitions

(a) "Best Interests"

The preservation of the connection between a child and his or her culture, family and tribe in a setting that is stable, secure, safe, healthy and emotionally, spiritually, socially and intellectually enriching with due regard for the special needs of the child, or the creation of such a connection if one does not already exist.

(b) “CASA”

Court Appointed Special Advocate who is a responsible adult, other than an attorney, who has volunteered to serve as an officer of the Court and an advocate of the child, and who has been appointed by the Court to so serve.

(c) “Child”

Any child under eighteen (18) years of age that is not married or otherwise emancipated.

(d) “Child abuse” includes but is not limited to:

(1) any case in which:

(A) a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling; and

(B) such condition is not justifiably explained or may not be the product of an accidental occurrence: or

(2) any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact or prostitution; or

(3) any case in which a child is physically assaulted, which shall include, but not be limited to: intentional, knowing or reckless infliction of physical injury to the child; intentional, knowing, reckless or negligent infliction of physical injury to the child by means of a deadly weapon; or

(4) any case in which a child's mental health is affected by an observable and substantial impairment in functioning caused by cruelty, with due regard to the culture of the child.

(e) “Child Neglect”

Negligent treatment or maltreatment of a child by a person responsible for the child's welfare, under circumstances which indicate that the child's health and welfare is harmed or threatened by, but not limited to, the failure to provide adequate food, clothing, shelter, or medical treatment.

(f) “Child of the Tribes” or “Tribal Child”

Any child who is a member of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians, or is eligible for membership in the Tribes, and is the biological child of a Tribes' tribal member.

(g) “Court”

The Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians’ Tribal Juvenile Court.

(h) “Custodian”

A person who has physical custody of a child pursuant to tribal law or custom, or the laws of a state, or to whom temporary physical care, custody and control has been transferred by the parent or custodian of such child without order of the Court.

(i) “Extended Family”

Any person who is the child's grandparent, great-grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

(j) “Family Violence”

(1) any act or threatened act of violence or forceful detention, which results in physical or mental injury, or places the individual in fear of such harm; and

(2) such act is committed against the individual by:

(A) a person related by blood or marriage who is a spouse or husband, brother or sister, parent or child; or

(B) a person residing with the individual.

(k) “Human Services” or “DHS”

The Department of Human Services of the Tribes,

(l) “Indian Child”

A child who is a member of an Indian Tribe; or

(1) eligible for membership in an Indian Tribe and the biological child of a tribal member; or

(2) an Indian child as that term is defined by a state tribal agreement.

(m) “Indian Country”

All lands owned by, held in trust for, leased, occupied or otherwise controlled by the Tribes or any instrumentality of the Tribes, including any and all areas which may constitute the Indian country of the Tribes under any applicable provision of tribal or federal law.

(n) “Indian Custodian”

Any Indian person who has legal custody of an Indian child or a Tribes’ child under tribal law or custom, or under state law; or to whom physical custody, care and control has been transferred by the parent of such Indian child.

(o) “Indian Person”

Any person who is a member of an Indian tribe as that term is defined by this Code.

(p) “Indian Tribe”

Any Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for the services provided to Indians by the United States Government because of their status as Indians, including any Alaska Native Village as defined in section 1603(c) of Title 43 to the U.S. Code (Alaska Native Claims Settlement Act).

(q) “Local Law Enforcement”

Any law enforcement authority that is authorized to conduct law enforcement activities within the exterior boundaries of the reservation or Indian country. When this term is used, a presumption is created that the term first means the Tribes’ Tribal Police.

(r) “Parent”

The biological or adoptive parent of a child.

(s) “Qualified Expert”

Any person who is:

- (1) a member of the child's tribe who is recognized by the tribal community as knowledgeable in tribal customs regarding familial organizations and child rearing; or
- (2) a lay person having substantial experience in the delivery of social services to Indian families and children, and has extensive knowledge of prevailing social and cultural standards and child-rearing practices within the child's tribe; or
- (3) a professional with substantial experience in his or her field.

(t) “Qualified Elder” or “Historian”

An individual who, because of his or her knowledge or experience, has been certified by the Tribes’ Tribal Council to testify as to the traditions and customs of the Tribes before any federal, state or tribal court or administrative body.

(u) “Reservation”

The exterior boundaries of the Tribes reservation in the State of Oregon, as that reservation is now or hereafter defined by the United States.

(v) “Spiritual Healing”

Shall not be included under the definitions of abuse or neglect when any child is under care or treatment solely by spiritual means in accordance with the religious beliefs or practices of the child or the child's parent or custodian.

4-4-3 Jurisdiction as to Dependent Child

(a) A child is considered dependent if:

(1) the child is beyond the control of the parents or custodian, and the child's behavior is such as to endanger the welfare of himself or herself due to a mental health condition; or

(2) the child's condition or circumstances are such as to endanger the welfare of the child or of others, including but not limited to;

(A) any case where a parent or custodian is incapable of meeting his/her duties due to death, incarceration, hospitalization or other physical or mental incapacity without planning for the care and custody of the child; or

(B) any case where a child has been placed for care or adoption in violation of federal, state or tribal law; or

(C) any case where a child is neglected or abused as those terms are defined in this chapter; or

(D) any case where a child is abandoned; or

(3) the child is dependent on a public or private child-caring agency that needs the services of the Court in planning for the best interests of the child; or

(b) The Court may exercise jurisdiction under subsection (a) of this section if the non-custodial parent appears fit, including being capable of protecting the child from an unfit parent, or if the matter is best heard by a family law court and no prior custody determination has been made. The Court may exercise its jurisdiction in full, or may limit its jurisdiction to determining facts sufficient to make a temporary custody determination. In entering such a temporary custody order, the Court should consider the best interest of the child and the relative fitness of the parents based on the conditions and circumstances that brought the child before the Court. The Court may maintain its jurisdiction to allow for the filing of a custody petition.

4-4-4 Jurisdiction Attaches at the Time of Protective Custody

The jurisdiction of the Court shall attach from the time that the child is taken into protective custody. If initial custody is sought by application under Section 4-4-9(a)(2), jurisdiction attaches at the time of application for an order of custody.

4-4-5 Procedure

The Rules of Procedure for Juvenile Court, Chapter 2-14, shall apply to proceedings pursuant to this chapter unless otherwise provided for in this chapter.

4-4-6 Closed proceedings

All juvenile proceedings under this chapter are closed to the general public. The judge, in her or his discretion, may allow any non-party having an interest in the matter to attend the proceedings.

4-4-7 Parties to a Proceeding, Limited Rights of Participation

(a) The following people shall be considered parties to a proceeding and shall have all the rights of a party:

- (1) The child, who after eleven (11) years of age may be allowed to personally appear or after thirteen (13) years of age shall be allowed to appear, and his or her representative if one is appointed;
- (2) the parent or custodian;
- (3) the child's Indian Tribe, if other than the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians;
- (4) the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians, as represented by a person or agency designated by the Tribal Council;
- (5) Department of Human Services;
- (6) a grandparent for the purpose of asserting visitation rights; and
- (7) a CASA.

(b) Persons who are not a party under subsection (a) of this section may petition the Court for rights of limited participation. Such a petition must be filed at least two (2) weeks prior to the proceeding in which the person wants to participate. The petition must state:

- (1) the reason for seeking participation and the relief requested; and
- (2) why the parties can not adequately present the case; and

- (3) how the person's involvement is in the best interest of the child.

The Court may grant the petition and may restrict the rights of participation as the Court sees fit.

4-4-8 Right to Counsel

All parties to a juvenile dependency proceeding have the right to be represented by counsel or a Court approved spokesperson. Each party shall be responsible for the costs of his or her counsel or spokesperson. Should a party request or the Court determine that the child who is the subject of a juvenile dependency proceeding is in need of representation, the Court shall appoint an attorney, Court approved spokesperson, guardian ad litem or CASA to attend to the interests of the child. A person appointed to represent a child under this section shall be on a voluntary basis unless the Tribal Council has appropriated money for such representation.

4-4-9 Protective Custody; Emergency Medical Care

- (a) A child may be taken into protective custody by the Tribal Police or Human Services if:

- (1) the child's condition or surroundings reasonably appear to endanger the child's welfare and prompt removal is needed to prevent imminent physical harm or imminent physical damage; or

- (2) The Court has ordered that a child be taken into protective custody. Such order may be obtained by ex parte application that includes a sworn statement by the applicant that he or she believes the child's condition or surroundings are sufficient to justify protective custody under sub-subsection (1) above. Such application may be made on information and belief.

- (b) The Tribal Police shall take a child into protective custody if directed to do so by the Court or Human Services. Human Services may seek the assistance of other local law enforcement officers if needed to take a child into protective custody.

- (c) Tribal police or Human Services may take any non-Indian child found within the exterior boundaries of the reservation or Indian country into protective custody on an emergency basis to ensure the welfare of said child from herself or from a parent or custodian. A child so removed shall be placed into the custody of non-Tribal local law enforcement or an agent of the State Offices for Services to Children and Families.

- (d) When a child is taken into protective custody and it reasonably appears to the law officer or child protection worker that the child is in need of medical treatment to preserve his or her health, the law officer or child protection worker shall have the authority to authorize a medical evaluation. The law officer or child protection worker may authorize treatment for such child if:

(1) the child is found to be in need of medical treatment as diagnosed by a physician at the evaluation to preserve the child's health, and after due diligence, the parent or custodian cannot be located; or

(2) if a parent or custodian is located, and does not consent to such treatment, such treatment can only be provided upon order of the Court unless the evaluating physician diagnoses the child as needing immediate treatment to avoid death or substantial permanent injury.

(e) No person giving such authorization pursuant to this section shall have any liability, civil or criminal, for giving such authorization. The Court may order a parent to pay for such medical treatment.

4-4-10 Disposition of Child Taken into Protective Custody

(a) A child taken into protective custody is not under arrest and shall not be placed in a detention facility or jail. Such child shall be placed in the home of an extended family member, taken to a hospital or medical facility for treatment pursuant to 4-4-9, be placed in a shelter care facility licensed or approved by the Tribes, or placed in a foster home licensed or approved by the Tribes.

(b) A child taken into protective custody may be released to a parent or legal custodian at the discretion of the Department of Human Services with appropriate instruction as to the care of the child or of the need to attend a hearing pursuant to 4-4-11. The child must be returned to the appropriate parent or guardian if a shelter hearing pursuant to 4-4-11 has not occurred or a court order has not otherwise been issued authorizing continued protective custody.

(c) Local Law Enforcement or Department of Human Services shall maintain a record of children taken into protective custody that includes:

- (1) the child's name, age and address;
- (2) the name and address of the parent or custodian;
- (3) the name and address of the person from whom the child was removed and the circumstances giving rise to the need for protective custody;
- (4) the efforts to notify the parent or custodian; and
- (5) where the child was placed and why.

Such record shall be provided to the Court within twenty-four (24) hours after a child is taken into protective custody.

(d) As soon as practicable after a child is taken into protective custody, local law enforcement or Human Services shall notify the parents, legal guardian or custodian; of the following:

- (1) the action taken;

- (2) the time and place of the initial hearing;
- (3) that the child may be held until the shelter hearing; and
- (4) the contact information for Human Services.

(e) A child taken into protective custody who is not a resident of the reservation or Indian country or is not subject to the Court's continuing jurisdiction shall be released to the appropriate authority as soon as practicable.

4-4-11 Shelter Care; Conduct of Hearing

(a) No child may be held in protective custody for more than five (5) days, excluding Saturdays, Sundays and judicial holidays, without an order of the Court, pursuant to this section, that the child remain in shelter care pending further investigation of the child's condition or circumstances.

(b) A child may be maintained in shelter care pursuant to an order of the Court that finds there is probable cause to believe that a child is dependent and the child's condition or surroundings reasonably appear to endanger the child's welfare.

(c) An order for continued shelter care may only be issued after notice to the parent or custodian of the date and time of such a hearing. If a parent or custodian comes forward after the initial shelter hearing, the Court shall grant an additional hearing to determine if the child is to remain in shelter care as to that parent.

(d) A shelter order can be entered, in the absence of notice, if the Court has determined that the parent or custodian's whereabouts are unknown. If it appears to the Court that, by the continued due diligence of the tribal prosecutor or Human Services, that the parent can be found, the Court may continue the hearing to a later date not to exceed five (5) days.

(e) Any reports of protective custody under 4-4-10 shall be provided to the parent or custodian at the time of the hearing.

(f) A copy of any petition filed pursuant to 4-4-12, together with a summons, shall be served on the parent or guardian at the time of the shelter hearing. If no petition is filed at the time of a shelter hearing, the Court shall order that a petition be filed forthwith in compliance with 4-4-12 or release the child to the custody of the parent, guardian or custodian, from whose custody the minor was removed.

(g) A parent or custodian is entitled to present evidence as to why the child is no longer endangered by his or her condition or surroundings and can be safely returned home. The Court may hear any evidence that a reasonable person would rely upon in making such findings, including hearsay statements of the child contained in the report of the agency taking custody of the minor.

(h) The Court may continue the hearing for not more than five (5) days to allow the parties to prepare for an evidentiary hearing.

(i) After an evidentiary hearing, a Court shall make written findings and enter an order that:

- (1) the allegations are unfounded and order that the petition and summons be dismissed; or
- (2) the child be returned to the parent or custodian but that temporary custody shall remain with the Court pending further investigation; or
- (3) the child shall remain in shelter care pending further investigation; and
 - (A) the decision to remove the child was made in the best interests of the child; and
 - (B) remedial efforts are being made to prevent the need for continued removal considering the circumstances of the child and the results of such efforts, or order that such efforts be made; and
 - (C) find that the placement of the child complies with 4-4-19.

(j) A Court's findings and order shall be issued at the conclusion of the hearing. The Court may set additional shelter hearings as it sees fit.

4-4-12 Petition for Dependency; Form; Amendment

(a) Only a tribal prosecutor or Human Services may file a petition alleging a child named therein is a dependent child within the jurisdiction of the Court. Such petition may be filed based upon information and belief.

(b) The petition shall be filed prior to the shelter hearing unless good cause exists for not filing the petition. In any case, a petition shall be filed within two (2) days after the emergency removal or ex parte application for a removal order.

(c) The petition shall be entitled "In the Matter of _____, a child" and shall set forth with particularity:

- (1) the name, age, sex and residence of the child, and whom the child has resided with in the last six (6) months;
- (2) the tribal affiliations of the child, parent and custodian by heritage and, if known, their enrollment status;
- (3) a plain and concise statement of the facts including the date, time and location of the conditions or occurrences which bring the child within the jurisdiction of the Court pursuant to 4-4-3 and the specific code sections that give the Court jurisdiction;
- (4) the name, age and residence of the parent or custodian, and when there is no parent or custodian, the name, age and address of the nearest relative; and

(5) whether there is any custody or other proceeding involving the same child or subject matter pending in any court and the nature of such a proceeding.

Provided, that if one or more party or the Court, on its own motion, may at any time prior to the adjudicatory hearing direct that the petition be amended. If the amendment substantially departs from the facts originally alleged, the Court shall grant the parties such additional time to prepare for the adjudicatory hearing as may be required to ensure a full and fair hearing.

4-4-13 Summons; Form; Contempt of Court

(a) After the petition has been filed, summons shall issue forthwith by the Court. A true copy of the petition shall be attached to the summons.

(b) The summons, together with the petition, shall be served on the parents, the custodian, if different, and on the child if over the age of eleven (11), at least ten (10) days before the date of hearing stated on the summons. Summons and petition may also be served on anyone whose appearance at the hearing the Court deems necessary and proper for the determination of the issues.

(c) If the child's tribe is different than the Tribes, the summons shall be served, by registered mail, on the child's tribe at the address listed in the Federal Register in accordance with the Indian Child Welfare Act of 1978.

(d) The summons shall be entitled as the petition and shall be clearly labeled "Summons". The summons shall also contain:

(1) the date, time and exact location of the proceeding;

(2) a brief description of the proceeding with the phrase "as described more fully in the attached petition" and state that the parent or custodian and the child are entitled to be represented by an attorney or Court approved spokesperson, at their own expense, during the proceeding;

(3) a command that the person named therein shall appear before the Court as stated and that any person having custody of the child shall bring that child before the Court;

(4) a statement that failure to appear may result in the Court proceeding in the person's absence, making whatever order is deemed necessary for the protection of the child, or finding the person in contempt, which may be punishable under the applicable provisions of Tribal law, and

(5) a statement that if the person fails to come before the Court with the named child, a warrant for the arrest of the person and for the protective custody of the child may be issued by the Court.

(e) When a child in the physical custody of a summoned person is not brought before the Court or it appears to the Court that the summons will be ineffectual, the

Court shall issue an order for the protective custody of that child, if the Court determines that such an order is in the child's best interests.

(f) When requested, Tribal Police shall assist with the service of the summons. Law enforcement personnel from other jurisdictions may also assist with such service.

4-4-14 Consolidation

(a) In any case filed in the Court where the legal or physical custody of a child is at issue and there is also pending in Tribal Court, or adjudicated, a child custody or visitation case involving the child in a domestic relations or guardianship proceeding, the matters shall be consolidated. Matters so consolidated may be resolved at different stages of the proceedings.

(b) Upon entry of an order of consolidation, all matters related to custody or visitation shall be heard and decided together by the Juvenile Court, and existing orders may be modified.

4-4-15 Preliminary Investigation; Report to the Court

(a) After a shelter hearing, Human Services shall conduct an investigation of the child's condition and circumstances and shall report to the Court as provided in subsection (b) of this section.

(b) Human Services shall file a report with the Court not less than five (5) days prior to an adjudicatory hearing. When no shelter care hearing has been held, Human Services shall file a preliminary report to the Court not less than five (5) days prior to the preliminary hearing. The report shall contain:

- (1) a detailed discussion of the child's circumstances and conditions and the names of those people able to testify as to the circumstances and conditions of the child;
- (2) the present ability of the parent or custodian to meet the child's needs and what services are needed to maintain or return the child to the care of the parent or custodian;
- (3) the type, need for and appropriateness of any shelter care placement that occurred during the preliminary investigation including the dates of such care;
- (4) a plan as to what, if any, future action is needed to protect the child and reunify the family; and
- (5) the recommended placement for the child, how it meets the child's special needs and how the placement complies with 4-4-19;
- (6) what active efforts were made to prevent the removal or to reunify the family prior to the adjudicatory hearing;

- (7) the need for and type of emergency medical care that the child has been provided and if any current condition exists that needs treatment; and
 - (8) any other information necessary for a proper disposition of the case.
- (c) Human Services shall serve the report on the parties by U.S. mail not less than five (5) days prior to the hearing. The Court shall make the report available to any parties prior to the hearing.

4-4-16 Preliminary Inquiry; Prima Facie Case

- (a) If no shelter hearing is held, the Court shall set a time for a preliminary inquiry not less than five (5) days after a petition is filed or a child is returned to the parent or custodian after being taken into protective custody.
- (b) At such hearing, the Court shall inquire into the conditions and circumstances of the child to ensure that the child's best interests are being looked after and shall enter an order consistent with 4-4-15.

4-4-17 Disclosures; Depositions

- (a) In all proceedings under 4-4-18 or, each party, including a tribal prosecutor and Human Services, shall disclose to each other party the following information:
 - (1) the names and addresses of all persons the party intends to call as witnesses, together with any written or recorded statements of such persons;
 - (2) any written or recorded statements or memoranda of any oral statements made by the parent, custodian or child to any other party or agent of any other party;
 - (3) any reports or statements of experts made in connection with the case, including law enforcement reports, the results of any physical or mental examinations, and of comparisons or experiments that the party intends to offer in evidence;
 - (4) any books, papers, documents or photographs that the party intends to offer in evidence at the hearing, or that were obtained from or belong to any other party;
 - (5) any required reports to the Court; and
 - (6) such other information as may be relevant to the proceedings.
- (b) Disclosure shall be made as soon as practicable after a petition is filed. The Court may supervise the disclosures to insure a proper and expeditious process. The Court may also enter such orders as are necessary to preserve any recognized evidentiary privileges including the in-camera inspection and redaction of any non-

disclosable information, or otherwise protect information from disclosure as the interests of justice may require.

(c) The obligation to disclose is ongoing. At any stage of an adjudicatory hearing, a party shall make further disclosures of new or additional information.

(d) Upon being notified of a breach of the duty to disclose, the Court may order such information disclosed, grant a continuance, refuse to permit a witness to testify or refuse to admit into evidence the material, or enter such other order as the Court finds appropriate.

(e) The Court may allow the taking of a deposition if such deposition is needed to perpetuate the testimony of a witness who is outside the Court's jurisdiction or unable to attend because of age, infirmity, illness, imprisonment or undue hardship. In allowing the deposition, the Court shall consider if the witness can testify by phone. Depositions shall be taken pursuant to Tribal Court Rules of Civil Procedure.

4-4-18 Adjudication of Dependency Petition; Conduct of the Hearing

(a) No adjudicatory hearing shall be held unless proper notice was provided to all necessary parties at least ten (10) days prior to the hearing. An adjudicatory hearing must be held within ninety (90) days after a petition is filed, unless the Court expressly makes the finding that holding the hearing within ninety (90) days would be contrary to the interests of justice.

(b) Any party to a proceeding shall have the right of compulsory process of any witness necessary for the hearing. Such subpoena shall be in the form prescribed by and served in compliance with the Tribal Court Rules of Civil Procedure.

(c) Any party has the rights of due process and shall be allowed to cross-examine any witness except as set out in subsection (e) of this section. Except as provided in this chapter, the rules of evidence of the Tribes' Evidence Code shall apply.

(d) No juvenile dependency shall be tried to a jury.

(e) The Court may exclude witnesses on the motion of a party. The Court, on its own motion or on motion of a party, may take testimony from a child or determine that it is not in the best interest of the child to testify due to age or mental capacity. If the Court determines that a child under thirteen (13) years of age should testify, the Court may take steps to ensure that the testimony is taken in a manner that protects the child's best interests, including an in-chamber interview with the judge that excludes the parent or custodian or video testimony. If a child's testimony is taken by a process that excludes a party, the party's representative shall be allowed to hear the testimony. A recording of the testimony shall be made available to the parties and made a part of the record.

(f) An out-of-court statement of a child, who is the subject of the proceedings, that would be considered hearsay under the rules of evidence, is admissible in an adjudication hearing subject to the right of any party to cross examine the individual who heard and reported the child's statement.

(g) A record of the proceeding shall be made by stenographic or electronic means.

(h) In order for the Court to declare the child to be a dependent of the Court, the Court must find that:

(1) the party seeking to remove the child from the custody of the parent or custodian has satisfied the Court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the removal of the child or to allow a return of the child from protective custody, and that these efforts have proven unsuccessful; and

(2) the facts, as alleged, are proven by a preponderance of the evidence that the continued custody of the child by the parent or custodian is likely to result in physical damage or emotional harm to the child, or that the child will endanger or harm others.

The Court may amend the petition at the end of an adjudicatory hearing to conform to the evidence presented if such an amendment does not prejudice the parties by substantially departing from the original allegations.

In the absence of such proof, the petition must be dismissed.

(i) The applicable provisions of the Tribes' Tribal Constitution and the Indian Civil Rights Act may not be invoked by parents or custodians in juvenile proceedings as a privilege against giving testimony against their interest regarding a juvenile proceeding, provided that parents or custodians may invoke these provisions to prevent them from testifying to facts that would or could incriminate them relevant to a criminal proceeding.

4-4-19 Informal Resolution

(a) At any time prior to an adjudicatory proceeding, the Court, on its own motion or the motion of a party, may set the matter for a judicial settlement conference. At such conference, the Court may take admissions and make the child a dependent, or may dismiss the petition in favor of an agreement between Human Services and the parent or custodian to engage in remedial services.

(b) If a voluntary agreement is sought by the parties, the Court must find that this resolution is in the child's best interests and that the parent or custodian understands the obligations and consequences of the agreement. Such agreement shall be in writing and state the remedial service plan agreed to and how such plan will be carried out.

(c) No voluntary plan under this section shall take more than six (6) months to fulfill unless approved by the Court and reviewed by the Court within six (6) months.

(d) Human Services shall review the family's progress every thirty (30) days. If the parent or custodian fails to follow the plan between the first thirty- (30) day review and the expiration of the agreement, Human Services shall refile the petition and take any other steps needed to protect the child.

(e) A voluntary agreement that includes an out-of-home placement for the child may be withdrawn by the consenting party at any time by written notice served on the parties and filed with the Court. Upon notice of withdrawal of consent, the child shall be returned immediately to the parent or custodian unless the child's conditions and circumstances are such that protective custody is warranted pursuant to 4-4-9

4-4-20 Placement of Children; Preferences

(a) The following placement preferences shall apply to all placements under this chapter.

(b) Any child accepted for placement out of his or her home under this chapter shall be placed in the least restrictive setting which most approximates a family and which meets any special needs of the child. Such placement shall also be within reasonable proximity to his or her home. Whenever possible, all siblings accepted for placement shall be placed together.

(c) In the absence of good cause to the contrary, an out-of-home placement decision maker shall give preference to:

- (1) a member of the child's extended family;
- (2) a foster home licensed or approved by the Tribes;
- (3) a foster home licensed, approved or specified by the child's Tribe;
- (4) an Indian foster home licensed or approved by an Indian organization;
- (5) an Indian foster home licensed or approved by a state or non-governmental agency; or
- (6) an institution for children approved by an Indian Tribe or operated by an Indian organization that has a program suitable to meet the child's needs.

(d) The Court, in approving a placement, should consider:

- (1) the best interests of the child;
- (2) the reasonable desires of the parent or custodian;
- (3) the reasonable desires of the child if over the age of eleven (11) years;
and
- (4) the geographic location of the placement in relationship to the community from which the child is removed.

(e) Any party may file a motion to invalidate a placement made in contradiction of the above requirements.

4-4-21 Disposition of Case

(a) After an adjudication determines that a child shall be made a dependent of the Court and specific findings of fact are made on the allegations stated in the petition, the Court shall determine the disposition of the case. Such disposition may occur immediately following the conclusion of the adjudicatory hearing or may be continued for not more than thirty (30) days to allow the parties to present additional information on the needs of the child, parent or custodian, and the availability of a preferred placement. If disposition is continued, the Court shall enter an order temporarily placing the child until the disposition hearing is concluded.

(b) The Court may order remedial services for the child, and parent or custodian, and may:

- (1) permit the child to remain with a parent or custodian subject to protective supervision by Human Services, and such limitations and conditions as the Court may prescribe;
- (2) give custody to the Department of Human Services to place the child in accordance with 4-4-19;
- (3) transfer legal custody of the child to a non-governmental agency responsible for the care of dependent children or to a family member or other person capable of meeting the child's needs;
- (4) Recommend emancipation of the child; or
- (5) Recommend such long-term plan as may be in the child's best interests.

(c) For the purpose of determining proper disposition of the case, the Court may receive such other reports, documents or testimony, as it deems relevant. The rules of evidence shall not apply to the disposition hearing.

(d) A child made a dependent of the Court shall remain a dependent of the Court until;

- (1) the petition is dismissed or dependency is otherwise terminated;
- (2) the Court transfers jurisdiction over the case to a foreign jurisdiction;
- (3) a decree of adoption is entered; or
- (4) the child reaches eighteen (18) years of age or is otherwise emancipated, unless the Court has, in a prior order, determined that dependency should continue until the completion of high school if the child is still in school on his or her eighteenth (18th) birthday.

(e) As part of a disposition, the Court may enter such other orders as are necessary to determine visitation rights of any person or party, restrictions on the child's associations or activities, conditions to be followed by the person or agency having

custody of the child, and what, if any, financial support a parent is obligated to make while the child is placed out of home.

4-4-22 Remedial Efforts

(a) At all stages of a proceeding under this chapter, Human Services shall make active efforts to provide remedial services and rehabilitation programs designed to prevent or eliminate the need for removal of the child from the home.

(b) When the Court is obligated to make a finding as to remedial services, its finding shall state what services were provided and why further efforts could or could not prevent or shorten the separation of the family.

(c) A remedial service plan shall be rationally related to the allegations found true by the Court and shall be reasonably calculated to achieve reunification of the family. In assessing the barriers to reunification, Human Services shall consider what services can be provided to the child, as well as the parent. Whenever possible, remedial services shall be Indian oriented, and designed to take into consideration the customs and traditions of the child's tribe.

4-4-23 Authority of Court Over Parents and Child

(a) Any parent or custodian of a child made a dependent of the Court and served with a summons pursuant to 4-4-13 shall be subject to the jurisdiction of the Court for the purposes of ordering participation in remedial services.

(b) The Court shall have authority to order a parent or child to comply with a remedial service plan pursuant to 4-4-22, including, but not limited to, the authority to order:

- (1) medical, mental, substance abuse or educational evaluations for the parent, custodian, and/or child;
- (2) counseling, therapy or substance abuse treatment or education for the parent, custodian, and/or child;
- (3) contribution by a parent, custodian or guardian to the financial support of the child;
- (4) participation in tribal activities by the parent, custodian and/or child; or
- (5) inpatient treatment for a child.

4-4-24 Commitment to Human Services; Authority Over Placement

(a) The Court may specify the particular type of care, supervision or services to be provided by Human Services to children placed in their care, but the actual case planning and provision of such care, supervision and services shall be the responsibility of Human Services.

(b) In meeting its obligations under this section, Human Services shall consider the recommendations of the Court and shall allow the family to assist in designing a reunification plan. To the maximum extent possible, Human Services shall seek to integrate its plan with other tribal or state programs.

(c) When a child committed to the care of Human Services is in need of medical care or other treatment by reason of physical or mental condition, Human Services shall have the authority to approve all necessary care and treatment in consultation with the parent or custodian. Human Services' initial case plan shall include a medical care and treatment plan, if needed, and shall update the Court as to the progress of such plan at periodic reviews.

(d) The Court may invalidate a placement if it determines that such placement is so inappropriate as to violate the rights of the child, parent or custodian, or is in violation of the placement preferences enumerated in 4-4-19.

(e) Human Services shall give notice prior to a change in placement or immediately after an emergency change in placement to the child's representative and to the parent and custodian.

4-4-25 Legal Custody; Duties and Authority

(a) At disposition, the Court may grant legal custody to Human Services or to another tribally approved agency for the care of dependent children.

(b) The duties and authority of the legal custodian are as follows:

- (1) to have physical custody and control of the child;
- (2) to supply the child with food, clothing, shelter and incidental necessities;
- (3) to provide the child with care, education and discipline;
- (4) to authorize ordinary medical, dental, mental health or other remedial care and treatment as the child needs and, in an emergency, to authorize surgery or other extraordinary care;
- (5) To make such reports and to supply such information as the Court may from time to time require;
- (6) To apply for any tribal, state or federal disability benefits or other public assistance to which the child is entitled, and to use those benefits for the care of the child, and to open a trust account for the management of those funds as may be necessary; and
- (7) To make an application for enrollment on behalf of the child with a tribe in which the child is eligible for enrollment and with which the child has the closest relationship.

4-4-26 Juvenile Court Guardianship; Duties and Authority

(a) At the time of disposition, the Court may grant guardianship to Human Services or to any other person or tribally approved agency for the care of dependent children. A grant of guardianship may be different than the grant of legal custody. If no grant of guardianship is made, the Court retains the duties and authority of a guardian as an incident of its dependency

(b) A guardian's duties and authority consist of the following:

- (1) to authorize surgery or other extraordinary care but this authority does not prevent a legal custodian from exercising his authority under 4-4-25(b)(4)
- (2) to authorize the child to enlist in the Armed Forces of the United States;
- (3) to consent to the child's marriage;
- (4) to consent to the adoption of a child freed for adoption pursuant 4-8;
- (5) to make legal decisions for the child;
- (6) to make educational decisions for the child; and
- (7) to make an application for enrollment on behalf of the child with a tribe that the child is eligible for enrollment and has the closest relationship.

(c) A guardian appointed under this section is not given authority to act as conservator of the child's estate unless specifically appointed to act in such capacity.

4-4-27 Other Duties and Authority

(a) All other duties and authority not delegated by the Court or granted under this chapter shall be retained by the Court.

(b) Only the Court may consent to the placement of a child in an inpatient mental health treatment facility.

(c) No person or agency may change or consent to change the residence or domicile of the child without the express permission of the Court. Approval of a placement in a location different than the child's residence at the time of the filing of a petition shall not be sufficient consent. The Court shall not consent to a change in residence unless the Court is assured that its jurisdiction will not be materially jeopardized and such change is in the child's best interests. Any legal custodian or guardian who seeks to change the child's residency without first obtaining the permission of the Court shall automatically lose their grant of authority over the child, and shall be considered to have unlawful custody of the child.

4-4-28 Review of Child Made Dependent of the Court

Within ninety (90) days of the original dispositional hearing, and at least every six (6) months thereafter so long as a child remains within the jurisdiction of the Juvenile Court

and a permanent plan for the child has not yet been established by Court order, the status of the child will be reviewed to:

- (a) Determine the continuing need for, and appropriateness of, Court jurisdiction and of the child's placement;
- (b) Determine the extent of compliance by all parties with the case plan;
- (c) Determine the extent of progress the parent has made toward eliminating the need for removal of the child from parental care, including, but not limited to, the efforts at compliance with required services, and whether sufficient progress is being made to consider return home likely in the near future;
- (d) Consider whether the remedial services provided to the family have been appropriate, accessible and provided in a timely manner; further consider whether the Department of Human Services Program can reasonably provide additional services which will facilitate the return of the child to parental care;
- (e) Assess the Department of Human Services Program's concurrent case planning, if any, and the Program's efforts to affect an alternative permanent plan for the child in the event there is insufficient progress to restore custody;
- (f) Determine whether reasonable efforts are being made by the Department of Human Services Program to alleviate the need for removal of the child from parental care; and
- (g) Project a likely date when the child will be returned to parental care or when an alternative permanent plan will be put into effect.

4-4-29 Notice

All parties, including children over twelve (12) years of age and foster parents, shall be notified of their right to appear and be heard at the hearing.

4-4-30 Status Review Reports

The Department of Human Services shall prepare, and any other party or person may prepare, a report to the Court for the hearing. These reports shall be filed, and copies shall be given to all parties or sent to a place calculated to assure receipt, no later than five (5) calendar days before the hearing, except by order of the Court. The Program's report shall provide supportive documentation if appropriate, and shall:

- (a) Summarize the history of the case and efforts made to offer services to the child and family;
- (b) Detail the child's and family's circumstances, including the case management and casework by the Department of Human Services, since the prior Court hearing;

(c) Detail the compliance made or not made by the parent, guardian or custodian and the Department of Human Services; and Detail the efforts made to develop a concurrent plan to be implemented in the event the family cannot be reunified, or why a concurrent plan is not practical at this time, and efforts made to implement that concurrent permanent plan.

4-4-31 Presumption in Favor of Return to Parent

The Court shall return a child to the physical custody of the parent, guardian or custodian, unless the Department of Human Services shows good cause why returning the child would not be in the child's best interests.

4-4-32 Permanent Plan Review Hearing

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

4-4-33 Notice

All parties, including children over twelve (12) years of age and foster parents, shall be notified of their right to appear and be heard at the hearing.

4-4-34 Permanency Planning Reports

The Human Services Department shall prepare, and any other party or person may prepare, a report to the Court for the hearing. These reports shall be filed, and copies shall be given to all parties or sent to a place calculated to assure receipt, no later than five (5) days before the hearing, except by order of the Court. The Program's report shall provide supportive documentation, if appropriate, and shall:

- (a) Summarize the history of the case and efforts made to offer services to the child and family;
- (b) Detail the child's and family's circumstances, including the case management and casework by the Human Services Department, since the prior Court hearing;
- (c) Detail the compliance made or not made by the parent, guardian or custodian and the Human Services Department;
- (d) Detail the efforts made to develop a concurrent plan, if necessary, to be implemented in the event the family cannot be reunified, and efforts made to implement that concurrent permanent plan;
- (e) Give specific reasons why the particular recommended permanent plan has been

chosen, specifying why that plan meets the child's particular needs and best interests, rather than other permanent plans which have not been chosen; and

(f) If required by applicable federal law, detail the compelling reasons why termination of parental rights is not being recommended as the permanent plan.

4-4-35 Permanent Plans

The Court may approve by Court Order, but is not limited to, any of the following permanent plans:

- (a) The child will be returned to a parent;
- (b) That a Petition for the Termination of Parental Rights be filed and that the permanent plan for the child shall be adoption;
- (c) A Legal Guardian be appointed for the child;
- (d) The child be placed in Permanent Foster Care of named custodians;
- (e) The child be continued in Long-Term Foster Care while the Human Services Department continues to identify and effect a permanent plan; or
- (f) The child, because of his/her special needs, be placed in Long-Term Substitute Care, until such time as the child can be safely accommodated in a less restrictive plan.

4-4-36 Petition for Return of Custody

In any case in which the parent's parental rights have not been terminated, the parent shall have the right to petition the Court no more than once a year for return of custody. At any hearing on the Petition for Return of Custody, the Petitioner must show by clear and convincing evidence that there has been a substantial change of circumstances and that it is in the best interests of the child to be returned to parental care. A hearing on the Petition will be set only if the Petition states a prima facie showing in the Petition to the Court.

4-4-37 Run Away from Placement

Any child who leaves or runs away from his or her placement shall be immediately reported to Human Services and Human Services shall report the child as a runaway to local law enforcement. The Court shall issue a warrant to take the child into protective custody upon ex parte application by Human Services.

4-4-38 Interpreters

If, at any stage of a proceeding under the this Chapter Code, the Court determines that a party is in need of an interpreter to understand the proceedings, the Court shall recess the matter until such time as an interpreter can be located to assist the party. The costs of an interpreter shall be borne by the Court.

4-4-39 Fees

(a) There shall be no fees for filing a petition under this chapter, and the Tribal Police shall not charge a fee for service of process or attendance at a Court hearing. Witness fees shall be paid pursuant to the Tribes' Rules of Civil Procedure.

(b) The Court may assess any fees incurred in the Court proceedings against the parent or custodian.

4-4-40 Records; Confidentiality

All records held by the Court or the Department of Human Services regarding Children in Need of Care shall be maintained in a confidential manner. Inspection of the records shall be controlled by 2-15-10

4-4-41 Reconsideration of Orders; Appeal

(a) When a parent or custodian was not present at an adjudicatory hearing due to failure of proper notice or when he has good cause for failing to appear, the Court shall grant a rehearing in full on the matter.

(b) The Court may modify or set aside any order made by it upon such notice and with such hearing as the Court may direct. The Court shall require notice to the parent or custodian and hold a hearing if the result of modifying or setting aside the order may deprive the parent or custodian of legal custody or change the placement of a child.

(c) If parental rights have been terminated pursuant to Chapter 4-9, Termination of Parental Rights, the parent may only request a modification or set aside if an appeal is pending. In no case may an order pursuant to Chapter 4-8, Adoptions, be modified or set-aside after the filing of a petition for adoption.

(d) An order after adjudication and all subsequent orders are final orders for purposes of appeal. Appeal may be had pursuant to the applicable rules of appellate procedure as any other matter in equity. The right to appeal a matter is subject to the establishment of an appellate court by the Tribal Council.

(e) An appeal shall not suspend or stay the juvenile proceeding, or release the child from the dependency jurisdiction of the Court unless expressly ordered by the appellate court.

4-4-42 Intervention and Transfer In State Court Cases under ICWA

(a) In any case in which Department of Human Services or the Child Protection Team is noticed or becomes aware of an action in the Court of any State or the District of Columbia in which a child who is a member of the Tribes, or the biological child of a person who is a member or eligible to become a member of the Tribes, is alleged or adjudicated to be a dependent of the Juvenile Court, the Department of Human Services or Child Protection Team may intervene in any such state court action.

(b) Upon intervention, the Department of Human Resources or Child Protection Team may participate in the state court action or may seek transfer of the action to Tribal Court, pursuant to the Indian Child Welfare Act, 25 USC §1911.

4-4-43 Acceptance of Transfer of Jurisdiction to Tribal Juvenile Court

(a) The Juvenile Court shall accept transfer of jurisdiction of any case in which the child who is the subject of the proceeding is domiciled on the Tribes' Reservation, as defined by 4-4-2.

(b) In any case where a tribal child is subject to state court jurisdiction and the child who is the subject of the proceeding is not domiciled on the Tribes' Reservation, the Court may accept transfer of jurisdiction, if the best interests of the Tribes and the child would be served by accepting transfer of jurisdiction.

(c) The Court shall conduct a Transfer-In Hearing to determine whether the best interests of the child and the Tribes will be served by accepting jurisdiction.

4-4-44 Transfer-In Hearing

(a) Upon receipt of a file transferred from a state court, the Juvenile Court Clerk shall transmit a copy of all documents in the file to the Department of Human Services. The clerk shall then set a Transfer-in Hearing not less than ten (10) and not more than thirty (30) days from the date of receipt of the file.

(b) Department of Human Resources shall prepare a Transfer-In report, which shall address the following:

- (1) the child's name, age and address;
- (2) the name and address of the parent or custodian;
- (3) the name and address of the person from whom the child was removed and the circumstances giving rise to the need for protective custody;
- (4) the status of the case at the time of transfer;
- (5) where the child is placed and why;

- (6) The strength of the child's ties to the Tribes;
 - (7) The proximity of the parent, guardian or custodian to the Tribal Court and the strength of the parent, guardian or custodian's ties to the Tribes; and
- (c) A copy of the report shall be served by mail on all parties at the last known address as indicated in the file transferred to the Court.
- (d) At the hearing, the Court shall review the report and hear from any party present on the issue of transfer of jurisdiction. If the Court determines that the best interests of the child and the Tribes will be served, the Court shall accept transfer of jurisdiction. If the Court determines that the best interests of the minor and the Tribes will not be served by accepting transfer, the Court shall decline transfer and return the case to the originating Court pursuant to 25 USC §1911.
- (e) If the Court accepts transfer, it shall make any orders necessary for the immediate care and protection of the child.
- (f) The Court shall schedule the next hearing in accordance with the procedural posture at the time of transfer, giving full faith and credit to the orders of the transferring Court.
- (g) From the date of acceptance on transfer-in, the case shall be conducted under the Tribes' Tribal Code.

APPENDIX A
LEGISLATIVE HISTORY AND EDITORIAL CHANGES

JUVENILE DEPENDENCY

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the “Juvenile Dependency” Ordinance, Resolution No. 05-109, Ordinance No. 066, a regular Tribal Council meeting on November 13, 2005. Vote was 6 (for), 0 (against) and 0 (abstaining).

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians approved the “Juvenile Dependency” Ordinance, Resolution No. 05-038, Ordinance No. 066, at a regular Tribal Council meeting on May 15, 2005. Vote was 5 (for), 0 (against), and 0 (abstaining).