

## **Title 10 YOUTH CODE**

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## **Chapter 10.04 GENERAL PROVISIONS AND DEFINITIONS**

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**10.04.010 Purpose and construction.**

- A. Purpose. This code shall be interpreted and understood to accomplish the following tribal objectives:
1. To provide for the care and protection of the young Indian people of the Squaxin Island Tribal Community;
  2. To insure that the young Indian people of the Squaxin Island Tribal Community receive assistance and guidance in their own homes, whenever possible, separating the youth from his or her parent only when necessary for his or her welfare;
  3. To protect and preserve the identity and pride of the young Indian people of the Squaxin Island Tribal Community as Native Americans;
  4. To provide a simple procedure for addressing and resolving conflicts involving Indian youth that is reflective of tribal traditions as well as the prevailing community standards, and which affords all affected persons a fair and impartial hearing, consistent with individual rights;
  5. To insure that off-reservation courts will be willing and able to return young people of the Tribe to the tribal community for care and guidance;
  6. To insure that the sovereignty of the Squaxin Island Indian Tribe is recognized in all matters affecting the welfare of the young people of the Squaxin Island Tribal Community.
- B. Construction. This code is exempted from the rule of strict construction. It shall be read and understood in a manner that gives full effect to the purposes for which it is enacted.
- C. Applicable Law. Whenever there is uncertainty or a question as to the interpretation of certain provisions of this code, tribal law or custom shall be controlling and where appropriate, may be based on the written or oral testimony of a qualified elder, historian, or other representative.
- D. Crimes Committed by Juveniles. Criminal offenses committed by any Indian youth shall be disposed of as provided by the Squaxin Island Tribe law and order code.

(Res. 86-26 (part))

**10.04.020 Jurisdiction.**

- A. Exclusive Jurisdiction. The Court shall have exclusive original jurisdiction over any proceeding concerning a youth alleged to be in need of care, termination of parental rights, adoption, or guardianship which involves:
1. Any Indian youth who resides or is domiciled in Indian country;
  2. Any youth who is a member or is eligible for membership in the Squaxin Island Tribe regardless of the youth's residence or domicile; or
  3. Any Indian youth who has been placed in temporary care in Indian country or in any care facility licensed by the Tribe for placement of Indian youth.
- B. Jurisdiction Over Adults. The Court shall have jurisdiction over adults in aid of its powers under this code, and may make such orders as are necessary for the welfare of a youth.
- C. Concurrent Jurisdiction. When state, federal or other tribal courts have jurisdiction over any of the matters provided for in this code, the Court has concurrent jurisdiction over the same matters, to an extent consistent with federal law, concurrent jurisdiction also exists when the custodial parent, guardian or custodian of a youth is an enrolled tribal member, the youth is a descendent of a tribal member, the custodial parent guardian, custodian or the youth resides or is domiciled on the reservation, and the custodial parent, guardian or custodian consents to Squaxin Island Tribal Court jurisdiction.

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- D. Jurisdiction—Limitations. The limitations on jurisdiction in this section are not intended to reflect the Tribe's view as to the legally permissible limits of jurisdiction, but are merely designed to define tribal activity in this area in accordance with tribal priorities and resources.
- E. Jurisdictional Agreements. The Tribe may enter into such intertribal and tribal-state agreements regarding jurisdiction over youth custody matters as it deems appropriate and necessary to protect the best interest of Squaxin Island youth.

(Res. 07-31 § 66: Res. 86-26 (part))

(Res. No. 11-46, 6-23-11)

### **10.04.030 Transfers of jurisdiction and intervention.**

- A. Notice to Other Tribes of Pendency of Action. When the Court or the Indian Child Welfare worker has reason to believe a youth, who is a party to an action under this code, may be enrolled or may be a member or eligible for enrollment or membership in another tribe, the Indian Child Welfare worker shall notify the other tribe of the pendency of the action.
- B. Transfer of Jurisdiction to Squaxin Island Court. The Court may accept or decline any transfer of jurisdiction over a youth by ex parte motion, but shall allow aggrieved parties a hearing on their objections, if any.
- C. Social Services Staff Investigation and Recommendation. The social services staff and the Indian Child Welfare worker shall meet, investigate, and make recommendations to the Tribal Council on whether to accept or request a transfer of jurisdiction, or to intervene in another court's proceeding in the following cases:
  - 1. When the tribe has received notice or has reason to believe that an action involving a Squaxin Island youth is pending in another court; or
  - 2. When the tribe has received a request from another jurisdiction to transfer a case from Squaxin Island Youth Court to the other jurisdiction.
- D. Guidelines for Transfers of Cases Involving Youths with Multitribal Affiliations. In deciding whether to transfer to or accept transfer from another jurisdiction, in cases involving a youth who may be enrolled or eligible for enrollment in another tribe, the social services staff and the Tribal Council shall be guided by the following considerations:
  - 1. The youth's length of residence on or near a tribe's territorial jurisdiction;
  - 2. The frequency of contacts the youth has had with a particular tribe;
  - 3. The youth's participation in tribal activities;
  - 4. Previous adjudications by the other tribe's court, if any, with respect to the youth;
  - 5. Residence on a particular reservation by the youth's parent or extended family member with whom the youth has resided for a substantial period of time;
  - 6. The wishes of the parent(s) and of the youth if he or she is over the age of twelve (12);
  - 7. Tribal membership of the youth's parent, guardian, or other custodian;
  - 8. Interest asserted by the tribe in response to notice given by the Squaxin Island Tribe;
  - 9. Tribal programs and resources available to meet the youth's needs and problems; and
  - 10. Any other factors the social services staff and Tribal Council deem relevant.
- E. Tribal Council Action. The Tribal Council shall decide whether to accept, reject or modify the recommendation of the social services staff.
- F. Requests for Transfer or Intervention. If the Tribal Council decides that the Tribe should intervene in another court's action or should request that jurisdiction be transferred to the Squaxin Island Youth

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Court, the Tribal Council shall request the presenting officer to file the appropriate petition. Upon receipt of transfer from another jurisdiction, the presenting officer shall file the appropriate action in the Squaxin Island Youth Court.

- G. Transfer to Another Jurisdiction. If the Tribal Council decides that the Tribe should transfer the case to another jurisdiction, the Tribal Council shall request the presenting officer to file a motion in the Youth Court for an order transferring jurisdiction.

(Res. 86-26 (part))

### 10.04.040 Definitions.

As used in this title:

"Abandon" means when a parent or custodian leaves a youth without providing for reasonable care and supervision for a period exceeding two days.

"Adult" means any person subject to the jurisdiction of the Squaxin Island Tribe who is either eighteen (18) years of age or older, married or otherwise emancipated.

"Court" or "Youth Court" means the Squaxin Island Tribal Court when exercising jurisdiction under this code.

"Custodian" means a person, other than a parent or guardian, who has been given temporary physical care, custody and control of a youth, including the duty to provide food, clothing, shelter, medical care, education, and supervision to the youth.

"Delinquent act" means an act committed by a youth which if committed by an adult would be designated a crime or for which a penalty is provided under tribal law.

"Domicile/residence" the determination of domicile and residence shall be in accordance with tribal law and custom. In the absence of other factors clearly demonstrating an intent to establish a permanent home outside of Indian country, a youth's domicile/residence shall be deemed to be within Indian country.

Extended Family. This term shall be defined by the law or custom of the Indian youth's tribe, or in the absence of such law or custom, shall be a person who has reached the age of eighteen (18) and who is the youth's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

"Guardian" means a person other than the youth's parent who is by law responsible for that youth.

"Guardian ad litem" means an adult appointed by the Court to represent the best interests of a youth in any proceeding to which he or she may be a party.

"Inadequate medical care " means evidence that an Indian child is not receiving adequate medical care, including, but not limited to the mother of the unborn child is not receiving adequate prenatal care or the mother of the unborn child is using alcohol or other drugs (prescribed and non-prescribed) to an extent that the fetus or infant is likely to be endangered.

"Indian child" means an unmarried and unemancipated Indian person who is under eighteen (18) years of age and is a member of an Indian tribe or eligible for membership in an Indian tribe. An "Indian child" includes the unborn child of a Squaxin Island Tribal member. In so defining an Indian child, there is no intention to affect, either positively or negatively, a woman's right to choose whether or not to bear a child.

"Indian country," consistent with the meaning given in 18 U.S.C. 1151 means:

1. All land within the limits of the Squaxin Island Indian Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; and

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2. All Indian allotments or other lands held in trust for a Squaxin Island Tribal member or the Tribe, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Indian tribe" means any Indian tribe, band, nation, or other organizational group, or community of Indians traditionally recognized as an Indian tribe by the Tribal Council or recognized as eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in Section 3(c) of the Alaska Native Claims Settlement Act as amended.

"Parent" means and includes a biological or adoptive parent but does not include persons whose parental rights have been terminated, nor does it include an unwed father whose paternity has not been acknowledged or established.

"Probable cause/reason to believe" means facts which support a reasonable belief of the existence of a particular conclusion.

"Reservation" means Indian country as defined in this section and any land that is reserved for the use, benefit and control of the Squaxin Island Tribe or a member of the Squaxin Island Tribe, or fee land, the title to which is held by the Squaxin Island Tribe.

"Shelter care" means an emergency or temporary placement for youths in need of care.

"Tribal status" means the tribe or tribes, if any, in which a youth is eligible to be enrolled or to be a member or is enrolled or is a member.

"Youth (minor)" means:

1. A person under the age of eighteen (18) years.
2. A person eighteen (18) years of age or older concerning whom proceedings are commenced in Youth Court prior to his or her eighteenth birthday.
3. Any person eighteen (18) years of age through twenty (20) years of age under the continuing jurisdiction of the Youth Court.

(Res. 07-31 §§ 67, 68; Res. 86-26 (part))

(Res. No. 10-15, 1-28-10; Res. No. 11-46, 6-23-11)

### **10.04.050 The court.**

- A. Establishment. There is established for the Squaxin Island Tribe a division of the Squaxin Island Tribal Court to be known as the Squaxin Island Youth Court.
- B. Judges. The Squaxin Island Youth Court shall consist of one or more judges as appointed by the Tribal Council.
- C. Qualifications. The Youth Court judges' qualifications shall be the same as the qualifications for judges who sit on the Squaxin Island Tribal Court.
- D. Powers and Duties of Youth Court Judge. In carrying out duties and powers under this code, judges of the Youth Court shall have the same powers and duties as judges of the Squaxin Island Tribal Court.
- E. Authority of Court.
  1. The Court is authorized to cooperate fully with any federal, state, tribal, public or private agency to participate in any diversion, rehabilitation or training programs and to receive grants-in-aid to carry out the purposes of this code.
  2. The Court may utilize such social services as may be furnished by any tribal, federal, state, or private agency.

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(Res. 86-26 (part))

### **10.04.060 Social services staff.**

- A. Social Services Staff—Defined. "Social services staff" means those persons employed or appointed by the Squaxin Island Tribe who are trained to deliver services in specific social areas such as, but not limited to, mental health, alcohol, community health, and education.
- B. Duties. The social services staff shall assist the Indian Child Welfare worker to:
  - 1. Request intervention in Indian Child Welfare cases in state court under Section 10.04.030;
  - 2. Request transfer of Indian Child Welfare cases from state court to the Youth Court under Section 10.04.030;
  - 3. Make recommendations to be included in the Indian Child Welfare worker's pre-dispositional and pre-termination of parental rights reports under this code;
  - 4. Recommend to the Tribal Council any changes that should be made in the youth code;
  - 5. Make recommendations to the Tribal Council and to the Department of Social and Health Services governing the licensing and operation of shelter care, foster care and other youth placement facilities.

(Res. 86-26 (part))

### **10.04.070 Indian Child Welfare worker.**

- A. Appointment. The Tribal Council shall appoint an Indian Child Welfare worker to carry out the duties and responsibilities set forth in this code.
- B. Qualifications. The Indian Child Welfare worker shall have an educational background and/or prior experience in the field of delivering social services to Indian youth.
- C. Resource Development. The Indian Child Welfare worker shall identify and develop within the tribal community resources designed to enhance each tribal youth's potential as a responsible member of the tribal community.
- D. Duties Not Performed. The Indian child welfare worker shall not be employed as, nor perform the duties of, prosecutor, presenting officer, or law enforcement official.
- E. Duties. The Indian Child Welfare worker shall:
  - 1. Make investigations as provided in this code or as directed by the Court;
  - 2. Make reports as provided in this code or as directed by the Court;
  - 3. Place a youth in shelter care as provided in this code; and
  - 4. Perform such duties in connection with care, custody, or transportation of youth as the Court requires.

(Res. 86-26 (part))

### **10.04.080 Presenting officer.**

- A. Appointment. The Tribal Council shall appoint a presenting officer to carry out the duties and responsibilities set forth in this code.
- B. Qualifications. The presenting officer's qualifications shall be the same as the qualifications for the individual who serves as prosecutor for the Tribal Court.

- C. Duties. The presenting officer shall:
1. File petitions with the Court as provided in this code;
  2. Represent the Tribe in all proceedings under this code; and
  3. Perform such other duties as the Court or this code may require.

(Res. 86-26 (part))

**10.04.090 Guardian ad litem.**

- A. Appointment. The Court, under any proceedings authorized by this code, shall appoint for the purpose of that proceeding, a guardian ad litem for a youth where it finds that the youth does not have a natural or adoptive parent, guardian, or custodian willing and able to exercise sound judgment as to the best interests of the youth, or upon the request of the Indian Child Welfare worker.
- B. Qualifications. The guardian ad litem must be familiar with the rights of youth and the provisions of this code.
- C. Duties. A guardian ad litem shall:
1. Represent the youth's best interest in any proceeding as required by the Court; and
  2. Make recommendations to the Court on disposition.

(Res. 86-26 (part))

**10.04.100 Confidentiality.**

- A. Hearings and Conferences. All hearings and conferences under this code shall be closed to the public. Only the presenting officer, the Youth Court judge, the Indian Child Welfare worker, the tribal law enforcement officers, and the parties to the action shall be permitted at the hearings and conferences; provided, that the parties may agree to allow the presence of other persons. Any person asked to testify or speak shall be permitted at the hearings and conferences but only for the limited purpose of giving testimony or presenting evidence.
- B. Records. All conference, hearing, and law enforcement records and files under this code shall be confidential and shall not be open to inspection to any but the following, except as may be ordered by the Court in the youth's best interest:
1. The youth and his or her legal representative.
  2. The parent, guardian, or custodian.
  3. The Indian Child Welfare worker.
  4. The presenting officer.

Law enforcement records and files under this code concerning a youth shall be kept separate from the records and files of adults.

(Res. 86-26 (part))

**10.04.110 Service.**

Except as otherwise expressly provided in this code, every pleading, motion, notice and similar paper which is required or permitted to be served upon a person shall be given in the following manner:

- A. By personally delivering a copy to the person by handing it to his or her counsel or to the person himself or herself; or by leaving it at his or her office with his or her secretary or other person; or

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if the person to be served has no office, leaving it at his or her dwelling place or usual place of residence with some person of suitable age and discretion then residing therein; or

- B. If personal service cannot be made, then by certified mail, return receipt requested, postage prepaid, and properly addressed to the last known residence of the person to be served.
- C. Personal service of all documents on behalf of the Tribe shall be made by tribal law enforcement.

(Res. 86-26 (part))

### **10.04.120 Continuances.**

- A. When to Order. Except as otherwise expressly provided, the Court may continue any proceeding:
  - 1. Upon the motion of a party if there is a finding that good reason exists for the continuance, including time to insure proper notice or to produce material evidence or witnesses currently unavailable; or
  - 2. Upon the Court's own motion if it considers it to be in the best interest of the youth.
- B. Effect. A continuance suspends the time limits for the holding of hearings and the filing of documents.

(Res. 86-26 (part))

### **10.04.130 Contempt.**

- A. Definition. Any wilful disobedience or interference with any lawful order or process of the Court shall constitute contempt.
- B. Punishment. The Court may punish any person for contempt in accordance with the law and order code.
- C. Bench Warrant. A Youth Court judge or judicial officer may issue a warrant for a person's arrest for contempt upon failure to appear at any ordered conference or hearing either in person or by legal representative.

(Res. 86-26 (part))

### **10.04.140 Rights of parties.**

- A. Rights. All parties are entitled to the following rights in all proceedings under this code:
  - 1. A statement by the Court to the youth and his or her parent, guardian or custodian that they have the right to have a legal representative advise and represent them, at their expense. A party may request a continuance of a proceeding in order to seek legal representation.
  - 2. The opportunity to subpoena witnesses.
  - 3. The opportunity to introduce, examine and cross-examine witnesses.
  - 4. The opportunity to discover, offer and inspect evidence.
  - 5. The opportunity to present arguments and statements.
- B. Jury Trial. There is no right to trial by jury during any proceeding under this code.

(Res. 86-26 (part))



**10.04.150 Appeal.**

- A. Record. For purposes of appeal, a record of the proceedings shall be made available to the youth, his or her parent, guardian or custodian. Costs of obtaining this record shall be paid by the party seeking appeal unless waived by the Court.
- B. Time Limit. Any party to a proceeding under this code may appeal a final order or disposition of the case by filing a written notice of appeal with the Court within thirty (30) days of the final order or disposition.
- C. Conduct of Proceeding. All appeals shall be conducted in accordance with the Squaxin Island court procedures ordinance, except as modified in this chapter.

(Res. 86-26 (part))

**10.04.160 Full faith and credit.**

The Court shall give full faith and credit to state and other tribes' custody court orders if the court granting the order had jurisdiction over the case and the order does not violate the public policy of the Squaxin Island Tribe.

(Res. 86-26 (part))

**10.04.170 Amendments and severability.**

- A. Amendments. Amendments to this code will be effective upon enactment by the Squaxin Island Tribal Council without further review by the Superintendent of the Bureau of Indian Affairs.
- B. Severability. Should any word, section, clause, paragraph, sentence, or provision of this code be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of any other part of this code which can be given effect without the invalid part or parts.

(Res. 86-26 (part))

**Chapter 10.08 YOUTH IN NEED OF CARE ACTIONS**

**Sections:**

[10.08.010 Starting a youth in need of care action.](#)

[10.08.020 Preliminary inquiry regarding youths in shelter care.](#)

[10.08.030 Fact finding hearings.](#)

[10.08.040 Disposition.](#)

[10.08.050 Community boards mediation panel hearings.](#)

**10.08.010 Starting a youth in need of care action.**

- A. Youth in Need of Care—Defined. "Youth in need of care" means any youth who:
  - 1. Has no parent, guardian or custodian willing, available and able to provide adequate care for him or her;
  - 2. Has been sexually, physically or emotionally abused;

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3. Has not been provided with adequate food, clothing, shelter, medical or mental health care, education, and/or supervision by his or her parent, guardian, or custodian, and the deprivation is not due primarily to the lack of financial means of the parent, guardian or custodian. "Education" includes the parents' responsibility to send children to school regularly.
  4. Has been physically or emotionally neglected;
  5. Has been abandoned;
  6. Has repeatedly run away from home;
  7. Has been committing delinquent acts as a result of parental or custodial neglect, pressure, guidance or approval;
  8. Is in serious conflict with his or her parent, guardian or other custodian to the point where assistance outside the immediate family is needed or requested by the parent, guardian, or other custodian;
  9. Has been placed for care or adoption in violation of the Indian Child Welfare Act of 1978.
- B. Complaint—Filing. A complaint may be filed with the Squaxin Island Tribal Law Enforcement Department or the Indian Child Welfare worker's office by any person who has personal knowledge that a youth is in need of care as defined by this code.
- C. Contents of the Complaint. The complaint shall include:
1. The name, age and address of the youth who is subject of the complaint, if known; and
  2. A plain and concise statement of the facts upon which the complaint is based, including the date, time and location at which the alleged facts occurred; and
  3. The name of the complainant shall not be disclosed to anyone except the Indian Child Welfare worker, the presenting officer, tribal law enforcement and the judge or judicial officer unless otherwise ordered by the Court. The Indian Child Welfare worker may disclose the name of the complainant to the social services staff if he or she deems it necessary.
- D. Receipt of Complaint by Tribal Law Enforcement. Upon receipt of a complaint that a youth is in need of care, tribal law enforcement shall take the following steps:
1. An enforcement officer shall immediately investigate the complaint. If the enforcement officer has probable cause to believe that a youth is in need of care based on his or her investigation, the Indian Child Welfare worker shall be notified. A notice procedure to define when immediate notice must be given to the Indian Child Welfare worker and when notice may be given at a later date may be established by the social services staff. Based on the investigation, a detailed written report shall be completed by law enforcement. A copy shall be delivered to the Indian Child Welfare worker within three working days of the date the complaint was received.
  2. If the enforcement officer reasonably believes the youth is in immediate and serious danger from his or her surroundings and removal is necessary for the youth's safety or well-being, the officer may take the youth into custody; provided, that if there is sufficient time and a judge or judicial officer is available, the enforcement officer shall first request an emergency custody order.
  3. If the enforcement officer takes a youth into custody without first obtaining an emergency custody order, he or she shall:
    - a. Release the youth to the youth's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate; or
    - b. Immediately notify the Indian Child Welfare worker and request direction as to whether the youth should be placed in shelter care and if so where; or
    - c. If the Indian Child Welfare worker cannot be reached, the officer may place the youth in shelter care, but shall continue attempts to notify the Indian Child Welfare worker.

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Placement of the youth shall be in a facility approved by a member of the social services staff for emergency shelter care in that particular case. A list of who to contact in emergency placements may be set by the social services staff and provided to law enforcement.

- d. If the youth is not released, immediate and continuing efforts shall be made by both the enforcement officer and the Indian Child Welfare worker to notify the youth's parent, guardian or custodian as to the circumstances surrounding the youth's custody.
- E. Receipt of Complaint by Indian Child Welfare Worker. Upon receipt of a complaint under this section or receipt of notice from law enforcement that a youth is in need of care, the Indian Child Welfare worker shall take the following steps:
1. Immediately confer with tribal law enforcement to determine whether further action on the complaint is necessary. If the Indian Child Welfare worker and law enforcement determine circumstances require it, an enforcement officer may conduct the investigation.
  2. If the Indian Child Welfare worker reasonably believes that a youth is in an emergency situation and requires shelter care, he or she shall:
    - a. Request an emergency custody order, if there is time and a judge or judicial officer is available; or
    - b. Immediately place the youth in shelter care. The Indian Child Welfare worker shall request assistance of an enforcement officer in making such placement.
    - c. If the youth's parent, guardian or custodian has not been notified, the Indian Child Welfare worker shall inform him or her at the earliest possible time and return the youth to him or her if such action is appropriate.
    - d. If a youth is taken into custody and it is unlikely that he or she will be released to his or her parent, guardian or custodian within two working days, the Indian Child Welfare worker shall immediately file a request for a preliminary inquiry.
- F. Emergency Custody Orders—Grounds. A Youth Court judge or judicial officer may issue an emergency custody order upon a sworn oral or written statement of facts showing probable cause to believe the youth is in need of care and that his or her health, safety and welfare will be seriously endangered if not taken into custody.
- G. Emergency Custody Orders—Content. The emergency custody order shall specifically name the youth to be taken into custody, be signed by the judge or judicial officer, state the date and time issued, the place where the youth is to be taken and name the person or persons authorized to take the youth into custody.
- H. Emergency Custody Order—Service and Duration. An emergency custody order must be executed within forty-eight (48) hours of issuance. A youth taken into custody under an emergency custody order may be held until the conclusion of a preliminary inquiry or as ordered by the Court.

(Res. 86-26 (part))

### **10.08.020 Preliminary inquiry regarding youths in shelter care.**

- A. Purpose of Preliminary Inquiry. If a request for preliminary inquiry is filed under Section 10.08.010, a hearing will be held to determine:
1. The tribal status of the youth;
  2. Whether there is probable cause to believe the youth is in need of care;
  3. The best interest of the youth and the Tribe with regard to any action to be taken; and
  4. Whether continued shelter care is necessary pending further proceedings.

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- B. Request for Preliminary Inquiry—Contents. A request for preliminary inquiry shall include:
1. The name, birthdate, residence, domicile and tribal status, if known, of the youth;
  2. The name and residence of the youth's parent, guardian or custodian;
  3. A citation to the specific section of this code which gives the court jurisdiction over the proceeding;
  4. A plain and concise statement of the facts which support the allegation that the youth is in need of care; and
  5. If the youth is in shelter care, the place of shelter care and the time taken into custody.
- C. Preliminary Inquiry—Time of Hearing. A preliminary inquiry shall be conducted within two working days of filing a request for preliminary inquiry.
- D. Notice. Notice of the preliminary inquiry shall be given by the court clerk, law enforcement officer, or a person appointed by the Tribal Council to fulfill these duties, to the parties as provided under Section 10.04.110A, Service, and shall include:
1. The name of the Court;
  2. A copy of the request for preliminary inquiry; and
  3. The date, time and place of the preliminary inquiry.
- E. Presence of Parent, Guardian or Custodian. If the youth's parent, guardian or custodian is not present at the preliminary inquiry, the Court shall determine what efforts have been made to notify and to obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the parent, guardian or custodian, the inquiry shall be recessed for a reasonable period of time and the Indian Child Welfare worker shall be directed to make continued efforts to obtain the presence of the parent, guardian or custodian.
- F. Presence of Counsel—Continuance. The Youth Court may not continue a preliminary inquiry solely to allow a party to obtain legal representation; however, a party who appears at a preliminary inquiry without legal representation does not waive his or her right to appeal any procedural or substantive error made at the preliminary inquiry by failing to make objections during the inquiry, if legal representation is obtained and written objections are made before the start of the fact-finding hearing.
- G. Court's Findings—Release of Youth. If at the conclusion of the preliminary inquiry the Youth Court finds that there does not exist probable cause to believe the youth is in need of care, the youth shall be released to the custody of his or her parent, guardian, or custodian.
- H. Court's Findings—Youth in Need of Care. If the Youth Court finds that there exists probable cause to believe that the youth is in need of care, it may order:
1. That the youth be released to his parent, guardian, or other custodian pending further proceedings; or
  2. That shelter care be continued if the Court finds that there is probable cause to believe that:
    - a. No parent, guardian, custodian, or other person is able or willing to provide adequate supervision and care for the youth, or
    - b. The youth will run away or otherwise be unavailable for further proceedings,
    - c. The youth will be in an emergency situation if he or she is returned to his or her parent, guardian or other custodian,
    - d. The youth will cause serious damage to persons or property, or
    - e. The youth requires medical care, treatment, or evaluation that he or she could not otherwise receive if he or she were to remain in the custody of his or her parent, guardian, or other custodian, or

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- f. The youth has been abandoned; or
3. That the youth and his or her parent, guardian or other custodian, or any other interested person within the Court's jurisdiction, attend community board mediation, and shall advise the parties as to the date, time and place of such mediation; and
4. That the parties shall keep the Court informed as to any changes in their mailing addresses.
- I. Shelter Care Placement. If a child is placed in shelter care under this code, the Court shall follow the placement preferences below:
  1. A private home recommended by the social services staff (this will usually be a responsible member of the youth's extended family); or
  2. A foster home approved by the Tribe; or
  3. A shelter care facility approved by the Tribe.
- J. Fact Finding Hearing—Scheduling at Preliminary Inquiry. If it appears that a petition for fact finding will soon be filed based upon the findings at the preliminary inquiry, the Court shall set a date and time for the fact finding hearing and shall advise the parties of the date, time and place of that hearing, and shall order their attendance at the hearing. If the parent, guardian or other custodian is not present at the preliminary inquiry, notice of the fact finding hearing may be served in accordance with subsection D of this section.

(Res. 86-26 (part))

### **10.08.030 Fact finding hearings.**

- A. Purpose. The Court shall conduct a fact finding hearing for the sole purpose of determining whether a youth is in need of care.
- B. Request for Fact Finding Hearing. A request for a fact finding hearing may be initiated at the preliminary inquiry under Section 10.08.020J or by a petition filed by the presenting officer upon recommendation of the Indian Child Welfare worker that it is in the best interest of the youth and the tribal community.
- C. Petition—Contents. A petition for fact finding hearing shall include:
  1. The name, birthdate, residence, domicile, and tribal status of the youth;
  2. The names, residences and tribal status of the youth's parent, guardian or custodian;
  3. A citation to the specific section of this code which gives the Court jurisdiction over the proceedings;
  4. A detailed statement of facts and reasons which support the allegation that the youth is in need of care. However, if a request for preliminary inquiry was filed previously, the petition may incorporate by reference the contents of the request; and
  5. If the youth is in shelter care, the place of shelter care and the time taken into custody.
- D. Time of Hearing. The Court shall set the date for hearing within thirty-five (35) days of receipt of a petition. Failure to comply with the time limits, without good cause shown, shall result in dismissal of the petition.
- E. Notice. Notice of a fact finding hearing shall be served on all parties in the manner specified under Section 10.04.110A by the court clerk or other person designated by the Tribe to perform this duty, at least five days prior to the hearing. The notice shall include the name of the Court; the date, time, and place of the hearing; and a copy of the petition. The notices shall be served on:
  1. The youth;
  2. The youth's parent, guardian or custodian;

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3. Any person the Court believes necessary for the hearing; and
  4. Any person the parties believe necessary for the hearing.
- F. Testimony. The Court shall hear testimony concerning the circumstances which gave rise to the petition. Before testifying at a Court hearing, every witness shall first state before the Court this oath, "On my honor and my family name I vow to tell the truth."
- G. Rules of Evidence—Purpose. The purpose of these rules of evidence is to ensure that the Court is able to determine the truth of a matter with a minimum of delay, confusion and uncertainty.
- H. Rules of Evidence—Reliability. The rules of evidence used in state and federal courts shall not apply to hearings before the Squaxin Island Youth Court. Where there is more than one kind of evidence about the same subject, the Court should hear the most reliable kind of evidence. In oral testimony, persons who testify from personal knowledge, such as first-hand observation of or participation in the event described, shall be preferred as witnesses to persons who have second-hand knowledge of the event.
- I. Rules of Evidence—Relevance. Evidence submitted during Court hearings must be related either to the issues before the Court or to the weight and credibility which should be given to other evidence. When questioned by the Court or another party, the party who wishes to present certain evidence shall explain why he or she thinks the evidence is relevant.
- J. Rules of Evidence—Ruling by Court. When the relevance or reliability of evidence is challenged and the Court decides whether or not to use the evidence, it shall explain the decision.
- K. Admissibility of Statements Made at the Preliminary Inquiry. All statements made at the preliminary inquiry are part of the Court record and are admissible in the fact finding hearing unless ruled to be inadmissible by the Court.
- L. Questioning Witnesses—Order Called. The Court shall determine the order in which parties or their representatives shall be allowed to question witnesses. The Court shall protect the witnesses from harassment or unnecessarily repetitive questioning. The Court itself may call and question any witnesses.
- M. Questioning Witnesses—Leading Questions. When questioning a witness, the Court and parties or their representatives shall not ask questions in such a way as to suggest the answer desired unless the witness is being cross-examined or is clearly hostile to the person asking questions.
- N. Written Testimony. Testimony of a witness may be presented in written form, if the witness is unable to appear in person to testify, if the evidence presented in writing is not contradicted by other parties, or if the written testimony is offered to support a motion or an uncontested request for relief. Written testimony should show clearly who gave it and when the witness gave it. Testimony should be given under oath, if possible.
- O. Rules for Discovery. The rules for discovery shall be the same as those rules that govern the Tribal Court.
- P. Burden of Proof. The burden of proof shall be clear and convincing evidence.

(Res. 86-26 (part))

**10.08.040 Disposition.**

- A. Predispositional Report—Purpose. The Indian Child Welfare worker, in consultation with the social services staff, shall prepare a written report describing all reasonable and appropriate alternatives.
- B. Predispositional Report—Contents. The report shall contain a specific plan for the care of and assistance to the youth and his or her parent, guardian or custodian. The report shall explain the necessity for the proposed plan and its benefits to the youth and his or her parent, guardian or custodian.

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- C. Predispositional Report—Placement Recommendations. If placement with someone other than the youth's parent, guardian or custodian is recommended, the report shall contain specific reasons for not recommending placement of the youth with his/her parent, guardian or custodian.
- D. Predispositional Report—Service. The Indian child welfare worker shall mail the predispositional report to the Court and all parties to the proceeding at least five days before the dispositional hearing.
- E. Additional Reports. Any party to an action pursuant to this code may file a predispositional report which shall include his or her recommendations for consideration by the Court.
- F. Dispositional Hearing—Time. A dispositional hearing may be held in conjunction with the fact finding hearing if the Court determines that such action is in the best interest of the youth. If the dispositional hearing is separate from the fact finding hearing, it shall take place within thirty-five (35) days of the fact finding hearing.
- G. Dispositional Hearing—Notice. The dispositional hearing shall be set at the fact finding hearing and such announcement shall constitute notice.
- H. Conduct of Dispositional Hearing. The court shall hear testimony to determine the proper disposition for the youth. The Court shall consider the predispositional report submitted by the Indian Child Welfare worker and any other reports submitted for review.

All parties shall be given the opportunity to contest the factual contents and conclusions of the predispositional reports submitted.

- I. Dispositional Alternatives for Youths in Need of Care. If a youth has been determined to be in need of care, the Court may take any of the following dispositions which are listed by priority:
  - 1. Permit the youth to remain with his or her parent, guardian or custodian, subject to any such limitations and conditions the Court may order;
  - 2. Place the youth with an extended family member subject to any limitations and conditions the Court may prescribe;
  - 3. Place the youth in a foster home which has been licensed or approved by the Tribe, subject to any limitations and conditions the court may order;
  - 4. Place the youth in a shelter care facility approved by the Tribe;
  - 5. Transfer legal custody to an agency responsible for youths in need of care, qualified to receive and care for the youth;
  - 6. Recommend that termination proceedings begin; or
  - 7. Order the youth to participate in a substance abuse treatment program in appropriate cases. This may be ordered in addition to any other disposition.
- J. Dispositional Order Is Final. The dispositional order constitutes a final order for purposes of appeal.
- K. Review and Modification of Dispositional Order. Dispositional orders are to be reviewed by the Court at least every six months. A dispositional order may be modified upon a finding of a good cause to modify.
- L. Motion to Modify. The Court shall review a dispositional order at any time upon the motion of the following to modify:
  - 1. The youth;
  - 2. The youth's parent, guardian or custodian;
  - 3. The Indian Child Welfare worker; or
  - 4. The presenting officer.

- M. Review Hearing. The Court shall conduct a hearing to review its dispositional order at least once every six months, or earlier upon motion of any party.

The Court shall review the performance of the youth, the youth's parent, guardian, or custodian, the Indian Child Welfare worker, and any other parties to the disposition.

- N. Standard for Modification. If the request for review of a disposition is based on the alleged violation of a court order, the Court shall not modify its dispositional order unless it finds clear convincing evidence of the violation.

(Res. 86-26 (part))

#### **10.08.050 Community boards mediation panel hearings.**

- A. Request for Mediation Hearing. A mediation panel hearing may be requested by the presenting officer, the Indian Child Welfare worker, or by order of the Court. The request shall be filed, in writing, with the tribal community boards coordinator.
- B. Notice of Hearing. Written notice of the mediation hearing shall be given to the youth and his or her parent, custodian or guardian and to all other parties to the mediation, as soon as the time and place for the hearing has been established. The notice shall include:
1. The name of the Court;
  2. A citation to the section of the code which gives the Court jurisdiction over the proceedings; and
  3. The date, time and place of the mediation hearing.
- C. Time of Hearing. The community boards coordinator shall schedule the mediation hearing as soon as possible.
- D. Service of the Notice of Hearing. The notice shall be delivered by the community boards coordinator or case developer or an appointee of the Court. If the notice cannot be delivered personally, the notice shall be delivered by any other method reasonably designed to give notice to the necessary persons.
- E. Procedure of the Mediation Panel Hearing. The following procedures apply to hearings of the mediation panel:
1. The hearing shall be informal and conducted according to the process established by the community boards program for panel mediation.
  2. No substantive information obtained at a community boards mediation hearing may be admitted into evidence at a court hearing or any other court proceeding unless all parties agree otherwise. However, the terms of an agreed disposition are admissible as evidence at a subsequent proceeding involving the care of the youth.
  3. If an agreed disposition is reached, it shall be set forth in writing, including any conditions or requirements to be performed. The youth, the youth's parents, custodian or guardian and the presenting officer, or Indian Child Welfare worker on behalf of the Tribe shall sign the agreed disposition.
  4. The agreed disposition shall be for a fixed period of time.
  5. If no agreement is reached during the mediation hearing or if the parties fail to appear at the scheduled hearing, a petition to initiate a court hearing may be filed by the presenting officer or, if a petition has been filed, the presenting officer may proceed to the fact finding hearing pursuant to this code.
- F. Monitoring—Failure to Comply With Agreement. The Indian Child Welfare worker shall monitor the agreed disposition throughout its term. If he or she finds that there has been a failure to comply with the terms of the agreed disposition, he or she may request another mediation hearing or recommend that the presenting officer file a petition or proceed with fact finding.



After a petition is filed, the youth or his or her parent, custodian or guardian may challenge before the Court the allegation of noncompliance with the agreed disposition. If the court finds that the parties have complied, it shall dismiss the petition and reinstate the agreed disposition.

- G. Agreed Disposition as Court Order. The Squaxin Island Tribal Court may enter an order based on an agreed disposition reached during a community boards mediation hearing provided that:
1. A petition for fact finding has been filed;
  2. The Court has jurisdiction over the parties and the subject matter of the case;
  3. All parties have notice of the terms of the agreement; and
  4. If the agreement provides that the youth will be placed outside his or her parent, custodian or guardian's home, the parties sign the agreement in the presence of the judge or judicial officer.

(Res. 86-26 (part))

## **Chapter 10.12 GUARDIANSHIP**

### **Sections:**

[10.12.010 General provisions.](#)

[10.12.020 Starting an action to appoint guardian.](#)

### **10.12.010 General provisions.**

Intent. It is the custom of the Squaxin Island Tribe that youths be raised within the supportive network of extended family and community if the youth's parents are unable to adequately care for him or her. The Squaxin Island Tribe has never recognized "termination of parental rights," even in cases of extreme abuse or neglect. A parent may have been completely restricted from having any contact with his or her child and the child may have been raised by a relative but the parent's status as the child's parent was never "terminated." Similarly, a person raising another person's child did not "adopt" the child. The provision for guardianship in this code is intended to reflect these values and customs of the Squaxin Island Tribe.

The Court may, on rare occasions, face cases which cannot be handled in the customary way. Chapter 10.16, Termination of Parental Rights, addresses those rare circumstances.

(Res. 86-26 (part))

### **10.12.020 Starting an action to appoint guardian.**

- A. Petition—Who May File. Any person at least eighteen (18) years old may file a petition with the Court requesting that he or she be appointed as a guardian. If the petitioner is married, his or her spouse must also be at least eighteen (18) years old and must sign the petition, unless the spouse's whereabouts is unknown or unless waived by the court. "Spouse" for purposes here includes common law spouses. "Common law spouse" for purposes of this code means parties to a marriage recognized under tribal custom or parties to a relationship wherein the couple reside together and intend to reside together as a family.
- B. Petition—Contents. A petition for appointment of a guardian shall include:
1. The name, birthdate, residence, and tribal status of the youth who is the subject of the petition;
  2. The name, birthdate, residence, and tribal status, if known, of the youth's parent(s) and of the petitioner(s);

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3. If the youth is residing with someone other than a parent, the location and length at that location; and
  4. A concise statement of the facts and reasons supporting the request that the petitioner be appointed as a guardian.
- C. Setting the Hearing. When the Court receives the petition it shall set a hearing date, which shall not be more than forty (40) days after the Court receives the petition.
- D. Notice of Hearing. Notice of the hearing shall be given by the court clerk or other person designated by the tribe to perform this duty as provided under Section 10.04.110, Service, at least twenty (20) days before the hearing. The notice shall include the date, time, and place of the hearing and a copy of the petition. The notice shall be served on:
1. The petitioner(s);
  2. The youth;
  3. The youth's parent(s);
  4. The presenting officer;
  5. Any person the Court deems necessary for proper adjudication; and
  6. Any person the parties believe necessary for the hearing.
- E. Guardianship Report—Preparation. The Indian Child Welfare worker, in consultation with the social services staff, shall prepare a guardianship report. In preparing the report, the Indian Child Welfare worker shall conduct a complete home study and shall consult with the youth's parent(s), all health, education and social service personnel who have had prior professional contacts with the youth, and with the petitioner(s) to determine whether appointment of a guardian would be in the best interests of the youth. The Indian Child Welfare worker may also review the child's previous court record, if any. In addition, the Indian Child Welfare worker must obtain the recommendation, if any, of the Squaxin Island Tribal Council as to the disposition and any other relevant issues. The guardianship report shall be in writing and contain the professional opinions of all personnel consulted.
- F. Guardianship Report—Service. The Indian Child Welfare worker shall mail the guardianship report to the Court and to all parties to the proceeding at least ten (10) days before the hearing.
- G. Additional Reports. Any party may file a report which shall include his or her recommendations for consideration by the Court.
- H. Guardianship Hearing—Purpose. The Court shall conduct the hearing to determine whether appointment of a guardian is in the best interest of the youth.
- I. Guardianship Hearing—Conduct. The hearing shall be private and closed. The following procedural rules apply: Section 10.08.030F, Testimony, Sections 10.08.030G through J, Rules of Evidence, Section 10.08.030K, Admissibility of Statements, and Sections 10.08.030L through M, Questioning Witnesses, Section 10.08.030N, Written Testimony, and Section 10.08.030O, Rules for Discovery.

The Court shall hear testimony to determine whether guardianship is in the best interest of the youth. The Court shall consider all guardianship reports submitted for review.

All parties shall be given the opportunity to contest the factual contents and conclusions of the guardianship reports.

- J. Grounds for Appointing a Guardian and Burden of Proof.
1. The Court may appoint a guardian when the following conditions have been proved by clear and convincing evidence:
    - a. The parent has consented in writing to the guardianship; or
    - b. The youth is a youth in need of care as defined under this code.

2. In addition to finding one of the above conditions has been proved, the Court must also find all the following conditions have been proved by clear and convincing evidence:
  - a. That appointment of a guardian is in the best interest of the youth; and
  - b. The youth's best interests would not be served if the youth remains under the parent's care and custody; and
  - c. That the petitioner(s) can provide appropriate and adequate parental care for the youth's financial and emotional support.
- K. Placement Preference. The order of preference in placing a youth with a guardian is:
  1. Extended family member;
  2. A member of or person eligible for enrollment in the Squaxin Island Tribe;
  3. A member of another Indian tribe;
  4. If this order of placement preference cannot be met, for good cause shown, then placement may be made with any person who has knowledge of and a desire to foster the youth's tribal affiliation and special needs.
- L. Enrollment Prior to Appointment of Guardian. If a youth is eligible for enrollment in the Squaxin Island Tribe, the Indian Child Welfare worker may assist the parent in making application for enrollment of the youth to the Squaxin Island enrollment clerk.
- M. Order of Appointment—Powers of Guardian. If the Court orders the appointment of a guardian, the order may define or limit the guardian's power. If the order does not define or limit the power of the guardian, the guardian has all the rights and responsibilities of a parent except:
  1. The power to enroll a youth in a tribe other than the Squaxin Island Tribe if the child is enrolled or eligible for enrollment in the Squaxin Island Tribe;
  2. The guardian shall not move outside a fifty (50) mile radius of the Squaxin Island tribal center without Court approval upon notice and hearing; and
  3. The guardian may not consent to any adoption of the child.
- N. Visitation. The Court may order visitation between the youth and parent(s) or any other person if the Court finds such visitation is in the best interest of the youth.
- O. Court Review. Unless ordered by the Court, the guardianship shall not be subject to periodic or continuing supervision.

(Res. 86-26 (part))

## **Chapter 10.16 TERMINATION OF PARENTAL RIGHTS**

### **Sections:**

[10.16.010 Starting an action for termination of parental rights.](#)

#### **10.16.010 Starting an action for termination of parental rights.**

- A. Petition. A proceeding to terminate parental rights shall be initiated by filing a petition with the Court. The petition shall include:
  1. The name, birthdate, residence, and tribal status of the youth who is the subject of the petition;

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2. The name, birthdate, residence, and tribal status, if known, of the youth's parent(s), guardian or custodian;
  3. If the youth is residing with someone other than a parent, the location and length at that location; and
  4. A concise statement of the facts and reasons supporting request that parental rights be terminated.
- B. **Setting the Hearing.** When the Court receives the petition, it shall set a date for the termination hearing, which shall not be more than sixty (60) days after the Court receives the petition.
- C. **Notice of Hearing.** Notice of the hearing shall be given by the court clerk or other person designated by the Tribe to perform this duty as provided under Section 10.04.110, Service, at least twenty (20) days before the hearing. The notice shall include the date, time, and place of the hearing, and a copy of the petition. The notice shall be served on:
1. The youth;
  2. The youth's parent(s), guardian or custodian;
  3. Any person the Court deems necessary for proper adjudication; and
  4. Any person the parties believe necessary for the hearing.
- D. **Pre-termination Report—Preparation.** The Indian Child Welfare worker, in consultation with the social services staff, shall prepare a pre-termination report. In preparing the report the Indian Child Welfare worker shall consult with the youth's parents, guardian, or custodian and all social services, health, and education personnel who have had prior professional contacts with the youth and his or her parent(s), guardian or custodian to determine whether termination of parental rights would be in the best interest of the youth. The Indian Child Welfare worker may also review any of the child's previous court record. In addition, the Indian Child Welfare worker must obtain from the Squaxin Island Tribal Council any recommendation it may have as to disposition and any other relevant issues. The pre-termination report shall be in writing and contain the professional opinions of all personnel consulted.
- E. **Pre-termination Report—Service.** The Indian Child Welfare worker shall mail the pre-termination report to the Court and all parties to the proceeding, at least ten (10) days before the hearing.
- F. **Additional Reports.** Any party may file a pre-termination report which shall include his or her recommendations for consideration by the Court.
- G. **Termination Hearing—Purpose.** The Court shall conduct the termination hearing to determine whether termination of parental rights is in the best interest of the youth.
- H. **Termination Hearing—Conduct.** The hearing shall be private and closed. The following procedural rules apply: Section 10.08.030F, Testimony, Sections 10.08.030G through J, Rules of Evidence, Section 10.08.030K, Admissibility of Statements, Sections 10.08.030L through M, Questioning Witnesses, Section 10.08.030N, Written Testimony, and Section 10.08.030O, Rules for Discovery.
- The Court shall hear testimony to determine whether termination of parental rights is in the best interest of the youth. The Court shall consider all pre-termination reports submitted for review.
- All parties shall be given the opportunity to contest the factual contents and conclusions of the pre-termination reports.
- I. **Grounds for Termination and Burden of Proof.** The Court may terminate a person's parental rights only when the following conditions have been proved beyond a reasonable doubt:
1. That termination of parental rights is in the best interest of the youth; and
  2. That guardianship, rather than termination of parental rights, is not in the youth's best interest; and

3. That an appropriate adoptive home is available and that adoption proceedings have been filed in conjunction with the termination proceedings.

In addition, the Court must find by proof beyond a reasonable doubt that the parent has consented to the termination of his or her parental rights under the terms of this chapter; or

That the parent is responsible for abuse of the youth as defined in this section.

- J. Consent. Consent of the parent to terminate parental rights is not valid unless:

1. It is in writing;
2. The parent has received counseling from the Squaxin Island social services staff on alternatives to termination such as guardianship, parental support services, and so on;
3. The parent orally explains his or her understanding of the meaning of termination of parental rights and its consequences to the Youth Court judge and the judge certifies that the terms and consequences of the consent were fully explained and were fully understood by the parent; and
4. The consent was given no sooner than thirty (30) days after the birth of the youth.

Any consent may be withdrawn prior to the entry of a final decree of adoption and, if no other grounds exist for terminating parental rights, the child shall be returned to the parent.

- K. Abuse. Abuse as a condition of termination of parental rights means:

1. Wilful and repeated physical injuries which cause or create a substantial risk of death, disfigurement or impairment of bodily functions; or
2. Wilful and repeated acts of sexual abuse.

- L. Disposition. If parental rights are terminated, adoption procedures shall proceed. If parental rights are not terminated but sufficient grounds for finding the youth is in need of care have been proved to the Court, the Court may make a disposition consistent with the youth in need of care provisions of this code.

- M. Enrollment Prior to Entry of Termination Order. If a youth is eligible for enrollment in the Squaxin Island Tribe, the Indian Child Welfare worker shall submit an application for enrollment of the youth to the Squaxin Island enrollment clerk prior to any final order terminating parental rights.

(Res. 86-26 (part))

## **Chapter 10.20 ADOPTION**

### **Sections:**

[10.20.010 General provisions.](#)

#### **10.20.010 General provisions.**

- A. Petition—Who May File. Any person eighteen (18) years or older wishing to adopt a youth may file a petition with the Tribal Court requesting that he or she be appointed as a guardian. If the petitioner is married, his or her spouse must also be at least eighteen (18) years old and must sign the petition, unless the spouse's whereabouts is unknown or unless waived by the Court. "Spouse" for purposes here includes common law spouses. "Common law spouse" for purposes of this code means parties to a marriage recognized under tribal custom or parties to a relationship wherein the couple reside together and intend to reside together as a family.
- B. Petition—Contents. The adoption petition shall include:

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1. The name, date of birth, residence and tribal status of the youth;
  2. The full name to be given to the child to be adopted;
  3. The name, age, place and duration of residence and the tribal status of the petitioner(s);
  4. The relation, if any, of the petitioner(s) to the youth;
  5. The names and addresses, if known, of all persons whose consent is required; and proof of consent, if given;
  6. A description of any previous civil proceedings involving the care or custody of the youth to be adopted and the results of these proceedings;
  7. The reasons the petitioner(s) desire(s) to adopt the youth.
- C. Availability for Adoption. A youth may be adopted only if he has no parents by reason of death or by the voluntary or involuntary termination of the parent-child relationship. The Court may conduct a hearing as provided under Chapter 10.16, Termination of Parental Rights, prior to or in consolidation with an adoption hearing.
- D. Setting the Hearing. When the Court receives the petition for adoption, it shall set a date for the adoption hearing, which shall not be more than sixty (60) days after the Court receives the petition, unless extended for good cause shown.
- E. Notice of Hearing. Notice of the hearing shall be given by the court clerk or other person designated by the Tribe to perform this duty as provided under Section 10.04.110, Service, at least twenty (20) days before the hearing. The notice shall include the date, time and place of the hearing, and a copy of the petition. The notice shall be served on:
1. The petitioner(s);
  2. The youth;
  3. The youth's parent(s), guardian or custodian;
  4. The presenting officer;
  5. Any person the court deems necessary for proper adjudication; and
  6. Any person the parties believe necessary for the hearing.
- F. Pre-Adoption Report. The Indian Child Welfare worker, in consultation with the social services staff, shall prepare a pre-adoption report. In preparing the report, the Indian Child Welfare worker shall conduct a complete home study including all information reasonably available concerning:
1. The physical and mental condition of the youth, the petitioner(s) and the petitioner(s)' family;
  2. The parent(s) of the youth;
  3. The home environment, family life, health facilities and resources of the petitioner(s);
  4. The youth's cultural heritage and tribal status;
  5. The marital status of the petitioner(s), if married, and divorce, if any. The names and ages of other children, both natural and adopted, of the petitioner(s);
  6. The recommendation, if any, of the Squaxin Island Tribal Council regarding the adoption; and
  7. Any other facts and circumstances relating to the propriety and advisability of the adoption.

When the petitioner(s) is a member of the youth's extended family, the court, in its discretion, may waive the formal written requirements for the pre-adoptive report and require only such oral information from the Indian Child Welfare worker and social services staff as the court deems necessary.

- G. Pre-Adoption Report—Service. The Indian Child Welfare worker shall mail the pre-adoption report to the Court and all parties to the proceedings at least ten (10) days before the hearing.

- H. Additional Reports. Any party may file a report which shall include his or her recommendations for consideration by the Court.
- I. Adoption Hearing—Purpose. The Court shall conduct the adoption hearing to determine whether adoption is in the best interest of the youth.
- J. Adoption Hearing—Conduct. The hearing shall be private and closed. The following procedural rules apply: Sections 10.08.030F, Testimony, 10.08.030G through J, Rules of Evidence, Section 10.08.030K, Admissibility of Statements, Sections 10.08.030L through M, Questioning Witnesses, 10.08.030N, Written Testimony, and 10.08.030O, Rules for Discovery.
- K. Grounds for Entering Decree of Adoption. The Court may enter a decree of adoption if it finds that all necessary procedures have been followed, that the Squaxin Island tribal council does not oppose it, and that it would be in the best interest of the youth.
- L. Denial of Adoption Petition. If the adoption petition is denied, the Court shall specifically state the reasons for the denial and shall designate who shall have custody of the youth.
- M. Decree of Adoption. If the Court grants the petition for adoption, the decree shall include:
  - 1. Such facts as are necessary to establish the youth is available for adoption, and that the adoptive home and parents are adequate and capable of providing proper care of the youth;
  - 2. A provision that the Bureau of Vital Statistics of the state where the child was born and the Bureau of Indian Affairs shall be notified of the adoption and a certified copy of the decree shall be mailed to those offices; and
  - 3. That such adoption remain temporary for one year from date of entry of such decree, and shall become permanent at the expiration of the one-year period.
  - 4. A provision changing the legal name of the person adopted may be included.
- N. Effect of Decree of Adoption. A decree of adoption has the following effect: It creates the relationship between the adopted person and the petitioner and all relatives of the petitioner, that would have existed if the adopted person were a legitimate blood descendant of the petitioner. This relationship shall be created for all purposes, including inheritance and applicability of statutes, documents, and instruments, whether executed before or after entry of the adoption decree, that do not expressly exclude an adopted person by their terms.
- O. 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 adopted person after reaching legal majority. However, information may be released as necessary to amend the child's birth certificate.

(Res. 86-26 (part))

## **Chapter 10.24 TRUANCY POLICY AND PROCEDURES**

### **Sections:**

[10.24.010 Title.](#)

[10.24.020 Statement of policy and purpose.](#)

[10.24.030 Jurisdiction.](#)

[10.24.040 Authority of the Tribal Council.](#)

[10.24.050 Enforcement.](#)

[10.24.060 Severability.](#)

[10.24.070 Violations.](#)

[10.24.080 Attendance requirement.](#)

[10.24.090 Procedures for intervention in matters of truancy.](#)

[10.24.100 Failure to attend school.](#)

[10.24.105 When tardies are considered absences.](#)

[10.24.110 Contributing to the delinquency of a minor.](#)

#### **10.24.010 Title.**

This chapter shall be known as the Squaxin Island Truancy Code.

(Res. 00-76 (part))

(Res. No. 13-39, 4-11-13)

#### **10.24.020 Statement of policy and purpose.**

It is the policy of the Squaxin Island Tribe of Indians to maximize the attendance of school by minor children in the Tribal Community by prohibiting unexcused absences and excessive excused absences from school and by invoking progressive civil penalties against repeatedly truant students and, where appropriate, against their parent(s) or guardian(s).

(Res. 00-76 (part))

(Res. No. 13-39, 4-11-13)

#### **10.24.030 Jurisdiction.**

- A. The provisions of this Truancy Code apply to all persons aged five years or older and to their parent(s) or guardian(s) as necessary to enforce the provisions of this Truancy Code.
- B. This Truancy Code applies to the full extent of the sovereign jurisdiction of the Squaxin Island Tribe. This specifically includes, without limitation, all enrolled members of the Squaxin Island Tribe and their descendants wherever domiciled; all persons domiciled on the lands of the Squaxin Island Tribe and to any person who participates in or receives assistance from any program operated by the Squaxin Island Tribe or its departments.

(Res. 00-76 (part))

(Res. No. 13-39, 4-11-13)

#### **10.24.040 Authority of the Tribal Council.**

- A. The Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe of Indians by the Authority of the Constitution and Bylaws of the Squaxin Island Tribe as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965.
- B. The Squaxin Island Tribal Council has been entrusted to provide for the social, health, and economic well being of its members.
- C. Except as may be otherwise provided by tribal law, all authority to regulate the school attendance of enrolled tribal members and to carry out and enforce the provisions of this code and the regulations adopted hereunder, shall be vested in the Tribal Council, which may delegate its authority to the Tu Ha'Buts Learning Center and/or Public Safety and Justice.



(Res. 00-76 (part))

(Res. No. 13-39, 4-11-13)

**10.24.050 Enforcement.**

Public Safety and Justice officers are authorized to investigate and enforce suspected violations of this code.

(Res. 00-76 (part))

(Res. No. 13-39, 4-11-13)

**10.24.060 Severability.**

Should any of the provisions of this code, or its application to any person or circumstance, be held or ruled invalid or unconstitutional, the remainder and its application to other people and circumstances shall not be affected.

(Res. 00-76 (part))

(Res. No. 13-39, 4-11-13)

**10.24.070 Violations.**

It shall be considered a truancy violation to fail to comply with any provision of this code that is worded in terms "no person shall," "no one may," "a person must," "it is unlawful to" or other similar language.

(Res. 00-76 (part))

(Res. No. 13-39, 4-11-13)

**10.24.080 Attendance requirement.**

Every child under eighteen (18) years of age must be enrolled in the public school of the district in which the child resides, a private school, or an approved home school program, and must comply with the attendance requirements of that school or home school program, unless the child is exempted from attendance requirements under applicable law. Regardless of the attendance requirements of the appropriate school or home school program, the determination that a student is truant shall be made in accordance with the terms of this code.

- A. Each day in which a child fails to enroll as required by this section shall constitute an unexcused absence.
- B. A failure to attend which is excused by the particular school shall be considered an excused absence under this code.
- C. A failure to attend which is not excused by the particular school shall be considered an unexcused absence under this code.
- D. When a child has been charged with failure to attend school (see Section 10.24.100), or has failed to meet any court-ordered penalties and/or conditions pursuant to such a charge, during any rolling two-year period, all subsequent absences shall be deemed unexcused unless accompanied by a note from a licensed physician or other health care provider. Absences as a result of a death in the child's immediate family, sickness of a dependent, or other emergency situations may also be deemed excused with appropriate written documentation.

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- E. Any student who has either five unexcused or excused absences, in any calendar month, or ten (10) unexcused or twenty (20) excused absences accumulated throughout the school year, whichever comes first, shall be considered truant under this code.

(Res. 00-76 (part))

(Res. No. 13-39, 4-11-13)

### **10.24.090 Procedures for intervention in matters of truancy.**

- A. The Tu Ha'Buts Learning Center ("Learning Center") and the Public Safety and Justice Department ("department") shall implement procedures, as adopted by the Tribal Council, for intervention in matters of truancy.
- B. The Learning Center and the department shall, from time to time, suggest appropriate revisions or amendments to the procedures for consideration by the Tribal Council.
- C. Any student who is truant under this code, and the parent(s) or guardian(s) of such student, shall be subject to the intervention procedures through which the Learning Center and the department implement this code.

(Res. 00-76 (part))

(Res. No. 13-39, 4-11-13)

### **10.24.100 Failure to attend school.**

Any student who is truant under this code may be charged with "Failure to Attend School" upon his or her fifth excused or unexcused absence in any calendar month, or upon his or her tenth (10th) unexcused or twentieth (20th) excused absence in any one school year. After being charged with failure to attend school under this section, a student may be charged separately under this section upon each subsequent absence.

- A. Upon a charge of failure to attend school, a citation shall be issued and both the truant child and his/her parent(s) or guardian(s) shall be called into Court.
  - 1. In the case of any child under the age of twelve (12) years, a citation shall be issued to the parent(s) or guardian(s). At the discretion of the department, a citation may also be issued to the child.
  - 2. In the case of any child age twelve (12) years or older, the citation will be issued to both the child and the parent(s) or guardian(s).
  - 3. The department shall have discretion to issue a citation calling into court only the parent(s) or guardian(s) of a child charged with failure to attend school where either the department or the Learning Center determines that attending court would be harmful to the child.
- B. Penalties and Conditions.
  - 1. Every charge of failure to attend school, and every failure to meet conditions set by the court pursuant to a charge of failure to attend school, shall result in mandatory penalties and/or conditions. Penalties and conditions should be progressive, so that subsequent charges or failures to meet conditions within any rolling two-year period result in penalties more severe than prior charges for the same period.
  - 2. The Tribal Court shall have the flexibility to assign penalties and conditions consistent with the enforcement abilities of the Tribe and the circumstances of the child, parent, and/or guardian. These penalties and conditions include, but are not limited to, any one or more of the following:
    - a. Penalties Administered by the Learning Center.

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- i. Mandatory tutoring;
- ii. Weekly and/or daily school progress reports with copies to parent(s) or guardian(s) and Learning Center;
- iii. Mandatory parent/guardian conference(s) with the school;
- iv. Mandatory counseling as appropriate for the parent(s), guardian(s) and/or student;
- v. Monthly and/or weekly contact with the Squaxin Island Tribe's school counselor;
- b. Penalties Administered by the Department.
  - i. Fines;
  - ii. Community service;
  - iii. House arrest;
  - iv. Electronic monitoring;
  - v. Juvenile detention.

(Res. 00-76 (part))

(Res. No. 13-39, 4-11-13)

**10.24.105 When tardies are considered absences.**

For the purposes of this code, any three tardies of one-half hour or more shall be considered as one absence.

(Res. No. 13-39, 4-11-13)

**10.24.110 Contributing to the delinquency of a minor.**

A. The parent(s) or guardian(s) of any student who is charged with failure to attend school under this code shall be charged with contributing to the delinquency of a minor.

Upon a charge of contributing to the delinquency of a minor, a citation shall issue and the truant child's parent(s) or guardian(s) shall be called into Court.

B. Penalties and Conditions.

1. Every charge of contributing to the delinquency of a minor, and every failure to meet conditions set by the court pursuant to a charge of contributing to the delinquency of a minor, shall result in mandatory penalties and/or conditions. Penalties and conditions should be progressive, so that subsequent charges, related to the truancy of one or more children, or failures to meet conditions, within any rolling two-year period result in penalties and/or conditions more severe than prior charges for the same period.
2. The Tribal Court shall have the flexibility to assign penalties and conditions consistent with the enforcement abilities of the Tribe and the circumstances of the child, parent, and/or guardian. These penalties include, but are not limited to, the following:
  - a. Penalties Administered by the Learning Center.
    - i. Participation in the child's court-ordered tutoring;
    - ii. Mandatory parent/guardian conference(s) with the school;
    - iii. Mandatory counseling as appropriate;
    - iv. Review and sign progress reports from the school;

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- v. Monthly and/or weekly contact with the Squaxin Island Tribe's school counselor;
  - vi. Provide other support for child's compliance with all Court orders related to truancy as appropriate;
- b. Penalties Administered by the Department.
- i. Fines;
  - ii. Community service;
  - iii. House arrest;
  - iv. Electronic monitoring;
  - v. Detention.

(Res. 00-76 (part))

(Res. No. 13-39, 4-11-13)

## Chapter 10.28 CURFEW CODE

### Sections:

[10.28.010 Title.](#)

[10.28.020 Purpose.](#)

[10.28.030 Jurisdiction.](#)

[10.28.040 Authority of Tribal Council.](#)

[10.28.050 Enforcement.](#)

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[10.28.070 Definitions.](#)

[10.28.080 Penalties and conditions.](#)

### 10.28.010 Title.

This title shall be known as the "Squaxin Island Curfew Code."

(Res. 04-61 (part))

### 10.28.020 Purpose.

For the protection of the children and others in the tribal community, it is the policy of the Squaxin Island Tribe to minimize the presence of unsupervised children on the streets in the evening hours.

(Res. 04-61 (part))

### 10.28.030 Jurisdiction.

The provisions of this chapter apply to all youth and their parents and/or guardians on lands within the jurisdiction of the Squaxin Island Tribe.

(Res. 04-61 (part))

**10.28.040 Authority of Tribal Council.**

The Squaxin Island Tribal Council is the governing body of the Squaxin Island Tribe of Indians by the Authority of the Constitution and Bylaws of the Squaxin Island Tribe as adopted by the General Body and approved by the Secretary of the Interior on July 8, 1965.

(Res. 04-61 (part))

**10.28.050 Enforcement.**

Public safety officers are authorized to investigate and enforce suspected violations of this chapter.

(Res. 04-61 (part))

**10.28.060 Violations.**

It shall be considered a curfew violation to fail to comply with any provision of this chapter.

(Res. 04-61 (part))

**10.28.070 Definitions.**

The following terms, whenever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

"Curfew" means a time in the evening beyond which children may not appear on the streets if not under parental control. The curfew applies as follows:

Ages 0—7	Always be under parental control
Ages 8—12	9:00 p.m. on school nights
	10:00 p.m. on nonschool nights
Ages 13—15	10:00 p.m. on school nights
	11:00 p.m. on nonschool nights
Ages 16—17	10:00 p.m. on school nights
	12:00 midnight on nonschool nights

"Parental control" means the direct supervision by a parent, guardian, or other designee aged eighteen (18) or older of the parent or guardian.

"School night" means any night before school.

(Res. 04-61 (part))

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**10.28.080 Penalties and conditions.**

The following penalties and conditions shall apply to violations of this chapter:

A. First Offense.

Age	Charge	Fine
0—7	Parent(s)/guardian(s) charged with failure to supervise	\$25.00
8—12	Parent(s)/guardian(s) charged with failure to supervise	25.00
13—15	Both child and parent(s)/ guardian(s) charged	
	Parent(s)/guardian(s) charged with failure to supervise	25.00
	Child charged with curfew violation	25.00
16—17	Both child and parent(s)/ guardian(s) charged	
	Parent(s)/guardian(s) charged with failure to supervise	25.00
	Child charged with curfew violation	25.00

B. Second Offense.

Age	Charge	Fine
0—7	Parent(s)/guardian(s) charged with failure to supervise	\$50.00
8—12	Parent(s)/guardian(s) charged with failure to supervise	50.00
13—15	Both child and parent(s)/ guardian(s) charged	
	Parent(s)/guardian(s) charged with failure to supervise	50.00
	Child charged with curfew violation	50.00
16—17	Both child and parent(s)/ guardian(s) charged	

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	Parent(s)/guardian(s) charged with failure to supervise	50.00
	Child charged with curfew violation	50.00

C. Third and Subsequent Offense(s).

Age	Charge	Fine
0—7	Parent(s)/guardian(s) charged with failure to supervise	\$100.00
8—12	Parent(s)/guardian(s) charged with failure to supervise	100.00
13—15	Both child and parent(s)/ guardian(s) charged	
	Parent(s)/guardian(s) charged with failure to supervise	100.00
	Child charged with curfew violation	100.00
16—17	Both child and parent(s)/ guardian(s) charged	
	Parent(s)/guardian(s) charged with failure to supervise	100.00
	Child charged with curfew violation	100.00

(Res. 04-61 (part))