

TITLE 6
HOH YOUTH CODE

FINDINGS

The Hoh Indian Tribe recognizes that there is no resource that is more vital to the continued existence and integrity of the Hoh (and others) Indian Tribe than our children and that we have a direct interest in protecting our Indian children who are members of, eligible for membership, or descendants of the Hoh Indian Tribe; and

The Hoh Indian Tribe further recognizes that an alarmingly high percentage of Hoh families are broken up by the removal, often unwarranted, of our children from their families by public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

The Hoh Indian Tribe recognizes that the States, asserting their jurisdiction over proceedings involving Indian children through judicial and administrative bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families; therefore

The Hoh Indian Tribe adopts the following Hoh Youth Code (“Code”) to protect, to the fullest extent of the law, our children, and where appropriate, to preserve the Indian family. All decisions made under this Code shall be made with the foregoing in mind.

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Chapter 1 GENERAL PROVISIONS AND DEFINITIONS

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1.01 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 Hoh Tribe;
2. To ensure that the young Indian people of the Hoh Tribe 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 encourage, guide, assist, and compel if necessary, the parent(s), guardian(s) or custodians of a Hoh youth to provide a safe and nurturing environment for the youth;
4. To ensure that Hoh youth reside in an adequate physical and emotional environment that will protect and promote the health, safety, and development of all Hoh children;
5. To protect and preserve the identity and pride of the young Indian people of the Hoh Tribe as Native Americans;
6. 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;
7. To provide child welfare services in accordance with laws, traditions and cultural values of the Tribe to Hoh youth and families;

8. To make every effort to prevent the unwarranted break-up of Indian families or to assist in strengthening families in order to provide for safe and healthy reunification;
9. To ensure that off-reservation courts will be willing and able to return young people of the Tribe to the tribal community for care and guidance;
10. To ensure that the sovereignty of the Hoh Indian Tribe is recognized in all matters affecting the welfare of the young people of the Hoh Tribe.

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 shall be controlling. If no Tribal law exists, the Court may look to the laws of other Tribes, the Federal government and/or the State of Washington for guidance.

D. Crimes Committed by Juveniles. Criminal offenses committed by any Indian youth shall be disposed of as provided by the Hoh Tribe law and order code.

1.02 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 on the Hoh Reservation;
2. Any youth who is a member or is eligible for membership in the Hoh Tribe regardless of the youth's residence or domicile; or
3. Any Indian youth who has been placed in temporary care on the reservation or in any care facility licensed by the Tribe for placement of Indian youth; or
4. Any other youth over which the Tribe may exercise jurisdiction in accordance with applicable laws.

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.

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 Hoh youth.

1.03 Transfers of jurisdiction and intervention.

A. Notice to Other Tribes of Pendency of Action. When the Court or the Indian Child Welfare case manager 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 case manager shall notify the other Tribe of the dependency of the action.

B. Transfer of Jurisdiction to Hoh 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. ICW Investigation and Recommendation. The Indian Child Welfare supervisor and the Indian Child Welfare case managers shall meet, investigate, and make recommendations to the Hoh Tribal Business Committee 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 Hoh youth is pending in another court; or
2. When the tribe has received a request from another jurisdiction to transfer a case from Hoh Youth Court to the other jurisdiction.

D. Guidelines for Transfers of Cases Involving Youths with Multi-tribal 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 Case managers and Director of the ICW department and the Tribal Business Committee 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 Hoh Tribe;
9. Tribal programs and resources available to meet the youth's needs and problems; and
10. Any other factors the Case managers and Director of the ICW department deem relevant.

E. Tribal Business Committee Action. The Hoh Tribal Business Committee shall decide whether to accept, reject or modify the recommendation of the ICW department.

F. Requests for Transfer or Intervention. If the Tribal Business Committee decides that the Tribe should intervene in another court's action or should request that jurisdiction be transferred to the

Hoh Youth Court, the Tribal Business Committee shall pass a Resolution requesting 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 Hoh Youth Court.

G. Transfer to another Jurisdiction. If the Tribal Business Committee decides that the Tribe should transfer the case to another jurisdiction, the Tribal Business Committee shall pass a Resolution requesting the presenting officer to file a motion in the Youth Court for an order transferring jurisdiction.

1.04 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 for children 12 and older, one day for children under 12.

“**Adult**” means any person subject to the jurisdiction of the Hoh Tribe who is either eighteen (18) years of age or older, married or otherwise emancipated.

“**Court**” or “**Youth Court**” means the Hoh 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.

“**Day**” means that whenever a rule, Tribal law or an order of the Court requires that an action be taken within a certain number of days, the day of the event from which the time limit runs shall not be counted; but the last day shall be counted unless it is a Saturday, Sunday or Tribal holiday. When the last day is a Saturday, Sunday, or the Tribal offices are closed for a Tribal holiday or due of inclement weather or other unforeseen reason, the deadline shall be the first work day following the day that is not counted. Where the time limit is less than seven (7) days, Saturday, Sunday, and Tribal holidays shall not be counted.

“**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 intent to establish a permanent home off the reservation, a youth’s domicile/residence shall be deemed to be within the reservation.

“**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, step-brother or step-sister, or stepparent.

“Failing to thrive” is a descriptive term, not a specific diagnosis. Slow growth and development of a baby, characterized by failure to gain weight, delayed development, unwillingness to interact, and gastrointestinal problems. Failure to thrive is almost always the result of inadequate nutrition, whether because of neglect or illness. (Source: www.babycenter.com/glossary/F).

“Family Group Conference” An Indian Child Welfare Case Manager may host a family meeting when a decision needs to be made about where a child should live. The Indian Child Welfare Case Manager may provide a forum for certain interested and qualified individuals (e.g. family members and service providers) to share ideas on how best to keep the child safe and support the family.

“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.

“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 Business Committee 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.

“Indian youth” means a youth who is under the age of eighteen (18) years and who is either enrolled in or a member of an Indian tribe or both eligible for enrollment or membership in an Indian tribe and a biological child of an enrolled Indian, or a descendent of an enrolled Hoh Indian to the second degree (i.e. grandchild of an enrolled Hoh Indian).

“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.

“Qualified elder, historian or other tribal representative” means an individual who, because of his or her knowledge and experience, has been recognized by the Hoh Tribal Business Committee as qualified to testify as to the traditions and customs of the Hoh Tribe.

“Reservation” means ***“Indian Country”*** as defined in Section 1151 of Title 18 U.S.C., and any lands not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual, subject to a restriction by the United States against alienation.

“*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, or a descendent of an enrolled 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.

1.05 Mandatory Reporting.

A. All persons who have reason to believe that a youth is in need of care shall report the abuse or neglect to Tribal Law Enforcement Officer, Washington State Child Protective Services (“CPS”) **and** Hoh ICW. Persons reporting may remain anonymous except for those listed in subsection B, below.

B. The following persons are required to report that a youth is in need of care and are subject to penalties for failure to report:

1. Nurse, physician, dentist, and all other medical/clinical personnel;
2. School principal, teacher, teacher’s aide/assistant, and all other school personnel;
3. Child care staff (including foster parents and guardians);
4. Mental Health professionals and staff;
5. Social Services and ICW professionals and staff;
6. Law enforcement officers and staff;
7. Employees of the Tribe who have contact with youth;
8. Tribal Business Committee members; and
9. Court personnel.

C. With the exception of the alleged perpetrator, all persons or agencies reporting, **in good faith**, known or suspected instances of abuse or neglect shall be immune from civil liability and criminal prosecution.

D. Those persons listed in subsection B, above, who knowingly fail to report, knowingly falsely make a report, or willfully prevent someone else from making a report shall be subject to a civil fine of up to five hundred dollars (\$500.00) and up to one hundred hours (100) of community service for the benefit of the Hoh Tribe. Anyone who knowingly makes a false report may be subject to additional criminal penalties.

1.06 The Court.

A. Establishment. There is established for the Hoh Tribe a division of the Hoh Tribal Court to be known as the Hoh Youth Court.

B. Judges. The Hoh Youth Court shall consist of one or more judges as appointed by the Tribal Business Committee.

C. Qualifications. The Youth Court judges' qualifications shall be the same as the qualifications for judges who sit on the Hoh 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 Hoh 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.

F. Court Clerk. The Court Clerk is responsible for receiving and filing documents submitted by parties and/or departments. The Court Clerk will send legal documents to all parties within five (5) days of receipt, unless the Tribal offices are closed.

1.07 Indian Child Welfare Department.

A. Indian Child Welfare Department—Defined. "Indian Child Welfare Department" means those persons employed or appointed by the Hoh Tribe who are trained to deliver family social work services.

B. Qualifications of Director. The Director of the ICW Department shall have a Masters Degree in Social Work or other relevant post-graduate degree, or a Bachelor's Degree in a relevant field and the equivalent work experience combined with supervisory experience necessary to supervise a staff of ICW case manager(s).

C. Duties. The Director of the ICW department shall assist the Indian Child Welfare case manager(s) to:

1. Request intervention in Indian Child Welfare cases in state or other Tribal courts under Section 1.03, with the assistance of the presenting officer;
2. Request transfer of Indian Child Welfare cases from state or other Tribal court to the Youth Court under Section 1.03, with the assistance of the presenting officer;

3. Make recommendations which may be included in the Indian Child Welfare case manager's pre-dispositional and pre-termination of parental rights reports under this code;
4. Recommend to the Tribal Business Committee any changes that should be made in the youth code;
5. Make recommendations to the Tribal Business Committee and to the Washington Department of Social and Health Services governing the licensing and operation of shelter care, foster care and other youth placement facilities.

1.08 Indian Child Welfare Case Manager.

A. Appointment. The Tribal Business Committee shall appoint/hire an Indian Child Welfare case manager(s) to carry out the duties and responsibilities set forth in this code.

B. Qualifications. The Indian Child Welfare case manager(s) shall have an educational background and/or prior experience in the field of delivering social services to Indian youth as per Tribal policy and procedures, which shall, at a minimum, be consistent with applicable federal or state law.

C. Resource Development. The Indian Child Welfare case manager(s) 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 case manager(s) shall not be employed as, nor perform the duties of, prosecutor, presenting officer, or law enforcement official.

E. Duties. The Indian Child Welfare case manager(s) shall:

1. Assist with and/or 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.

1.09 Presenting officer.

A. Appointment. The Tribal Business Committee shall appoint/hire 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;
3. Represent the Tribe in state and/or other Tribal court proceedings regarding youth who may be subject to the jurisdiction of the Hoh Tribe; and
4. Perform such other duties as the Court or this code may require.

1.10 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 case manager.

B. Qualifications. The guardian ad litem must be familiar with the legal 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.

1.11 Confidentiality.

A. Hearings and Conferences. All hearings and conferences under this code shall be closed to the public. Only the Youth Court judge, the presenting officer, the Indian Child Welfare case manager, 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, custodian, and legal representative.
3. The Indian Child Welfare case manager.
4. The presenting officer.

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

C. Employees, Officers, or Directors of the Tribe. There shall be no disclosure of information learned about any current or pending matter under this Code by any person employed by the Tribe or elected to any office of the Tribe, except as specifically authorized by the Court. This section does not apply to mandatory disclosure of suspected abuse or neglect.

1.12 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 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 **and** by regular United States mail, postage prepaid, to the last known address of the person to be served.

C. Personal service of all documents on behalf of the Tribe shall be made by a Law Enforcement Officer.

D. Service by Publication: If service cannot be accomplished by any method above, service may be achieved by publication. Service by publication shall require a posting at all Tribal buildings of the individual needing to be served and the initials of the case name (e.g. "In re the Welfare of E.G. and S.G., minor Indian children). Publication in a newspaper of general circulation (i.e. Forks Forum, Peninsula Daily News) must also be done once per week for at least two weeks prior to the scheduled hearing date.

1.13 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 ensure 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.

1.14 Contempt.

A. Definition. Any willful disobedience or interference with any lawful order or process of the Court shall constitute contempt, including but not limited to the unauthorized disclosure of any confidential information subject to this Code.

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.

1.15 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 own 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.

1.16 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 within five (5) working days. Costs of obtaining this record shall be paid by the party seeking appeal unless waived by the Court. If the party seeking appeal desires a transcript of the proceeding, the cost must be paid in advance and the length of time will exceed five (5) days. This is not grounds for an automatic judgment in favor of the appealing party, as it is outside of the control of 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 Hoh court procedures ordinance, except as modified in this chapter.

1.17 Full Faith and Credit.

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

1.18 Amendments and severability.

A. Amendments. Amendments to this code will be effective upon enactment by the Hoh Tribal Business Committee 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.

Chapter 2 YOUTH IN NEED OF CARE ACTIONS

Sections:

2.01 Starting a youth in need of care action.

2.02 Preliminary inquiry regarding youths in shelter care.

2.03 Fact finding hearings.

2.04 Disposition.

2.05 Child Protection Team hearings.

2.06 Family Group Conference.

2.01 Starting a youth in need of care action.

When there is a question of whether a youth is in need of care, the presumption shall be in favor of providing protection for the child.

A. A “youth in need of care” is one who:

1. Has been neglected. This term includes but is not limited to:
 - a. A child who is not receiving the food, clothing, shelter, medical care, dental care, education, or supervision needed for his or her well-being or development;
 - b. An infant who is failing to thrive mentally, emotionally or physically;
 - c. A child who is not dressed adequately for weather conditions;
 - d. A child who is habitually truant as defined by the Law and Order Code and herein;
 - e. A child left with a baby sitter who is under the influence of drugs, intoxicated, irresponsible, too young, and/or incapable of caring for a child;
 - f. A child who lacks parental control because of the habits or fault of the parent(s), guardian, or custodian;

- g. A child who is assuming parental responsibilities in running a household because the parent refuses or fails to act as a parent or forces the child to take on this role;
 - h. A child exposed to a dangerous situation or a potential life threatening injury as a result of parental negligence;
 - i. A child whose parent(s) misuse benefits intended for the child, such as selling or squandering food stamps or commodities;
 - j. An unborn child whose mother is using alcohol or illegal drugs;
 - k. A nursing child whose mother is using alcohol or other drugs to an extent that the baby may be endangered;
 - l. An unborn child whose mother is not receiving adequate prenatal care;
 - m. A child who is allowed access to alcohol or other drugs;
 - n. A child who is a runaway and/or a child who is attempting to live independently but who does not have the financial means to care for him or herself; and/or
 - o. A child who is habitually allowed to be out after curfew, if the Tribe has established a curfew.
2. Has been physically abused. This term includes but is not limited to:
- a. Any bruising, welting, abrasion, lesions, burns, broken bones, or other damage to the body, not clearly caused by pure accident;
 - b. A child who has been given inappropriate food, drink or drugs or a child who is suffering from malnutrition;
 - c. Inappropriate punishment (see Exhibit A “What is Child Abuse or Neglect?” Regarding ‘Physical Discipline of Child’ section two.)
3. Has been emotionally maltreated. Emotional maltreatment causes impaired psychological growth and development of the child. Both community values and professional expertise should be looked at when deciding whether emotional maltreatment has taken place. Some indicators of emotional maltreatment are:
- a. The child’s social relationships are seriously impaired: very low self-esteem, a consistent pattern of emotional difficulties such as listlessness, apathy, depression and self-deprecating remarks;

- b. Serious inability of the child to respond appropriately to the normal behavior of adults (e.g. the child cowers or ingratiate himself to adults);
 - c. Rejection: refusal to accept the child;
 - d. Ignoring: the parent deprives the child of essential responsiveness which stifles emotional growth and development of the child;
 - e. Ridicule / Terrorizing: Verbal assaults creating a climate of fear, bullying the child, name-calling, destroying the child's possessions, or attacking beloved people or pets;
 - f. Isolating: Cutting a child off from normal social experiences, preventing a child from forming friendships, or a child who is locked in or locked out of the home or who leaves home because of partying in the home;
 - g. Corrupting: teaching a child socially deviant behavior such as rewarding aggression, delinquency, or sexually precocious behavior;
 - h. Penalizing a child for positive, normal behavior;
 - i. Discouraging the attachment between care-giver and infant; failure to thrive and physical abuse may follow; and/ or
 - j. Exposure to domestic violence in the family: the child observes or overhears violence between members of the family and/or the child lives in an atmosphere of severe abusive conflict, creating acute or chronic fear in the child.
4. Has been sexually abused. This term includes:
- a. Contacts or interactions between a child and an adult when the child is being used for the sexual stimulation of the perpetrator or another person;
 - b. Sexual abuse may also be committed by a person under the age of 18 when that person is either significantly older (four years or more) than the victim or when the perpetrator is in a position of power or control over another child;
 - c. The exposure of the perpetrator's genitals in the presence of a child, or any other sexual act, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose;
 - d. Obscene calls, jokes, peeping, or sexual propositions;
 - e. Child pornography or sexual positioning for photos;
 - f. Forcing a child to watch sexual act or sexual violence;

- g. Unwanted hugs, kisses, pinching, tickling;
- h. French kissing, handling genitals, masturbation, mouth to genital contact;
- i. Oral, anal, or vaginal rape; and/or
- j. Sexual maiming or sexual bondage.

5. 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 as evidenced by, but not limited to:

- a. A youth who is habitually truant;
- b. A youth who is habitually disobedient of the reasonable and lawful commands of his or her parent, guardian and/or custodian;
- c. A youth who is a habitual runaway; or
- d. A youth who habitually engages in activities so as to injure or endanger the morals or health of himself or herself or others.

6. Has been placed for care or adoption in violation of the Indian Child Welfare Act of 1978.

The Hoh Tribe recognizes that a parent may need to place a child with another caregiver on a temporary basis. This is not in itself ground for a youth in need of care action, provided the substitute caregiver is adequately caring for the child. However, a parent who has placed a child with another person because he or she is unable to adequately care for a child is still expected by the community to work toward becoming a good parent. In addition, child raising practices including reasonable parental discipline, which do not harm the child's health, safety and welfare are not child abuse or neglect.

Child abuse and neglect are not always revealed by physical examination of the child or statements of the child. Behavior and emotional temperament of the child (and of the parent and/or perpetrator) may give more information about the existence of past or present maltreatment. The Court shall give weight to professional evaluations of these factors when deciding if a youth is in need of care.

B. Complaint—Filing. A complaint may be filed with the Hoh Tribal Law Enforcement Department or the Indian Child Welfare case manager'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 case manager, the presenting officer, Tribal Law Enforcement Officer and the judge or judicial officer unless otherwise ordered by the Court. The Indian Child Welfare case manager 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. A Tribal Law 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 enforcement officer shall immediately notify Washington State Child Protective Services (“CPS”), and shall also notify the Indian Child Welfare department. A notice procedure to define when immediate notice must be given to the Indian Child Welfare case manager 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 case manager within two (2) working days of the date the complaint was received.
2. If the Tribal Law 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 Tribal Law 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 CPS and the Indian Child Welfare case manager and request direction as to whether the youth should be placed in shelter care and if so where; or
 - c. If CPS and/or the Indian Child Welfare case manager cannot be reached, the Tribal Law Enforcement Officer may place the youth in shelter care, but shall continue attempts to notify CPS and the Indian Child Welfare case manager. Placement of the youth shall be in a facility approved by the ICW department for emergency shelter care in that particular case. A list of who to contact in emergency placements may be set by the ICW department and provided to Tribal Law Enforcement Officer;

d. If the youth is not released, immediate and continuing efforts shall be made by Tribal Law Enforcement Officer, CPS, and the Indian Child Welfare case manager 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 staff. Upon receipt of a complaint under this section or receipt of notice from Tribal Law Enforcement Officer that a youth is in need of care, the Indian Child Welfare staff shall take the following steps:

1. Immediately confer with Tribal Law Enforcement Officer to determine whether further action on the complaint is necessary. If the Indian Child Welfare case manager and Tribal Law Enforcement Officer determine circumstances require it, CPS shall immediately be requested to perform an investigation with the aid of a Tribal Law Enforcement Officer.

2. If the Indian Child Welfare case manager completes a "Safety Assessment" (see attached Exhibit B) and 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;

b. Immediately place the youth in shelter care. The Indian Child Welfare case manager shall request assistance of CPS and/or a Tribal Law Enforcement Officer in making such placement;

c. If the youth's parent, guardian or custodian has not been notified, the Indian Child Welfare case manager 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 case manager 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.

I. The Indian Child Welfare Case Worker may seek to hold a Family Group Conference at this stage to resolve the safety concerns and make a plan that is in the best interest of the child.

2.02 Preliminary inquiry regarding youths in shelter care.

A. Purpose of Preliminary Inquiry. If a request for preliminary inquiry is filed under Section 2.01, 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.

B. Request for Preliminary Inquiry— Contents. A request for preliminary inquiry shall include:

1. The name, birth date, 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 (unless confidential) and the time taken into custody.

C. Preliminary Inquiry—Time of Hearing. A preliminary inquiry shall be conducted within two (2) 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 Business Committee to fulfill these duties, to the parties as provided under Section 1.12, Service, and shall include:

1. The name of the Court;
2. A copy of the request for preliminary inquiry;
3. The date, time and place of the preliminary inquiry; and
4. Affidavit of Service

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 case manager 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 probable cause does not exist 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, including but not limited to the following, 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;
 - 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
 - f. The youth has been abandoned.
3. That the youth and his or her parent, guardian or other custodian, or any other interested person within the Court's jurisdiction, attend "Family Group Conference" 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 and physical addresses.

I. Shelter Care Placement. If a youth is placed in out of home care under this code, the Court shall follow the placement preferences below, in order of preference:

1. With a member of the youth's extended family;
2. With a member of the youth's Tribe;
3. A person from another Tribe; or
4. In emergency placements, any other safe and/or licensed location.

J. It shall be the policy of the Hoh Tribe that **all** adults and caregivers (16 years or older) in the placement shall submit to completing a background clearance authorization for Washington State Patrol, Tribal Police Background, Department of Social & Health Services, and submit fingerprints for a Federal Bureau Investigation immediately following placement of the youth in a home. The Tribe shall pay for the cost of the fingerprinting. In no circumstance shall a youth be placed in a home with a convicted sex offender (of any age) or any person convicted of a violent crime. A violent crime is considered to be any felony defined under any law as a Class A felony or an attempt to commit a Class A felony; criminal solicitation of or criminal conspiracy to commit a Class A felony and other offenses as defined in Revised Code of Washington 9.94A.030(41)&(50). Failure to comply with this section shall result in the youth being removed from the home unless and until all adults comply.

K. 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. A Fact Finding Hearing shall be set no later than forty-five (45) days following a Preliminary Inquiry or the filing of a Petition for Fact Finding, whichever is later.

2.03 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 2.02(K) or by a petition filed by the presenting officer upon recommendation of the Indian Child Welfare case manager 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, birth date, 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 (unless confidential) and the time taken into custody.

D. Time of Hearing. The Court shall set the date for a Fact Finding Hearing within forty-five (45) days of receipt of a petition, unless the date was set at Preliminary Inquiry. 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 1.12 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 and/or any legal representative;
2. The youth's parent, guardian or custodian and/or any legal representative;
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 Hoh 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. (See Title 1, Section 1.8).

P. Burden of Proof. The burden of proof shall be clear and convincing evidence.

2.04 Disposition.

A. Pre-dispositional Report—Purpose. The Indian Child Welfare case manager, in consultation with the other social services professionals, shall prepare a written report describing all reasonable and appropriate actions and services that are necessary for the parent(s) to complete in order to be considered for having their children placed back into their care and custody.

B. Pre-dispositional 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. This may include recommendations for treatment and/or other services or actions which ICW is recommending.

C. Pre-dispositional 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. Pre-dispositional Report—Service. The Indian Child Welfare case manager shall file the pre-dispositional report with the Court at least ten (10) days prior to the dispositional hearing. The Court Clerk shall serve all parties to the proceeding at least five (5) days before the dispositional hearing.

E. Additional Reports. Any party to an action pursuant to this code may file a pre-dispositional 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 pre-dispositional report submitted by the Indian Child Welfare case manager and any other reports submitted for review. All parties shall be given the opportunity to contest the factual contents and conclusions of the pre-dispositional 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 (an “in-home” dependency);
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 that 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. Order the parent(s) to participate in specific evaluations and/or treatment and/or other services as recommended by ICW;
7. Recommend that termination proceedings begin; or
8. 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 and/or legal representative;
2. The youth’s parent, guardian, custodian, and/or legal representative;
3. The Indian Child Welfare case manager; 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 case manager, 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.

2.05 Family Group Conference.

A. The Family Group Conference may be held at any time prior to or following court involvement when a decision must be made about where a child should live. Family Group Conference otherwise known as "Family Team Decision-Making Meeting" is a family focused intervention facilitated by the Indian Child Welfare Case Manager that is designed to build and strengthen the natural care giving system for the child. The purpose of the family group conference is to establish a plan that provides for the safety and permanency needs of the child and to build communication, cooperation and collaboration between family, the Tribe, and the child welfare professionals.

B. Family decision meetings may include, but are not limited to, family group conferences, family mediation, family support meetings, or other professionally recognized interventions that include extended family and rely upon the family to make recommendations about planning for its children.

C. The Indian Child Welfare Case Manager is responsible to host a meeting when asked by the Tribal Court, Child Protection Team, Washington Department of Social and Health Services, or Indian Child Welfare supervisor. A relative may seek the assistance of an Indian Child Welfare supervisor at any time.

D. An initial Family Group Conference is voluntary (unless specifically ordered by the Court) and can only be conducted if the child's parent or parents, and other family members agree. An initial family group conference must be held as soon as possible following the family's agreement to participate, rather than as soon as a child's involvement in the child welfare system. Tribal Elders, caregivers and extended family members shall be invited to attend, with the permission of the parent(s). All Family Group Conferences shall be confidential and no information discussed during the conference shall be shared to anyone outside of the conference unless necessary to protect the child.

E. The Indian Child Welfare Case Manager shall establish an agenda for the conference. The agenda will state the following topics to be discussed, and the Case Manager will facilitate the conference to seek a written agreement:

1. To decide whether the Child is in need of another place to live.

2. To define the requirements of what the child needs for safety and permanency. (For example, back ground checks for adults and caregivers over 16 years of age).
3. To seek the family's response to how the safety and permanency can be reached within a reasonable amount of time.
4. To determine what the strengths in the family are, and how they could be used to help the child and family.
5. To ask the family and group members to each contribute to a family decision to form a written contract that they can endorse to aid the child and their family.
6. To ensure that the written contract the family establishes contains contingencies for support or emergencies. The Indian Child Welfare Case Manager shall provide information on possible support groups, resources, etc.
7. To make sure the family understands that the Indian Child Welfare Case Manager is obligated to follow up to confirm the contract plan is functioning, and will be responsible for contacting collateral contacts.

F. The goal of the Family Group Conference is to make a plan that everyone feels is in the best interest of the Child. If the group is unable to come to an agreement, the Indian Child Welfare Case Manager and Supervisor are responsible to create a plan for the child based upon their investigation and any input from professional service providers.

2.06 Child Protection Team meetings.

A. The Child Protection Team. The Child Protection Team ("CPT") may include a representative from each of the following departments: housing director or his/her designee, drug & alcohol director or his/her designee, mental health director or his/her designee, daycare supervisor or his/her designee, ICW case managers, ICW director or his/her designee, member of the Tribal Business Committee (who shall be required to recuse him/herself if related to any parties in pending ICW cases), Tribal Elder, and Tribal Chief of Police. Other members of the Parties' families may be invited to participate (with agreement by the parents), but only for purposes of providing information and not as voting members.

B. Purpose of CPT. The purpose of the CPT shall be to meet on a monthly basis following court involvement to discuss pending dependency cases to provide the fullest possible picture of services available to children and families involved in dependency cases. Further, the CPT shall provide recommendations to ICW case managers on the development and implementation of case plans for families involved in such cases.

C. Notice of Meeting. Written notice of the meeting shall be given to the youth and his or her parent, custodian or guardian and to all other parties to the meeting, as soon as the time and place for the meeting has been established. The notice shall include:

1. The name of the Court involved;
2. A citation to the Section of the Code which gives the Court jurisdiction over dependency proceedings; and
3. The date, time and place of the meeting.

D. Time of Meeting. The CPT coordinator shall schedule the meeting as soon as possible after any manner of petition has been filed.

E. Service of the Notice of Meeting. The notice shall be delivered by the CPT coordinator or ICW case manager. 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.

F. Each Indian Child Welfare Case Manager will monitor and report to the court the results of the Child Protection Team's recommendation, and/or findings.

Chapter 3 GUARDIANSHIP

Sections:

3.01 General provisions.

3.02 Starting an action to appoint guardian.

3.03 Annual Review.

3.04 Vacate or Terminate Guardianship.

3.01 General provisions.

Intent. It is the custom of the Hoh Indian 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 Hoh Tribe has seldom recognized "termination of parental rights." 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 Hoh Indian Tribe. The Court may, on rare occasions, face cases which cannot be handled in the customary way. Chapter 4, Termination of Parental Rights, addresses those rare circumstances.

3.02 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 are 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, birth date, residence, and tribal status of the youth who is the subject of the petition;

2. The name, birth date, residence, and tribal status, if known, of the youth's parent(s) and of the petitioner(s);
3. If the youth is residing with someone other than a parent, the location and length at that location (unless it is confidential); 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, unless there is good cause to extend this time.

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 1.12, 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) and/or any legal representative;
2. The youth and/or any legal representative;
3. The youth's parent(s) and/or any legal representative;
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 Home Study Report—Preparation.** The Indian Child Welfare case manager, in consultation with appropriate social services professionals, shall prepare a guardianship report. In preparing the report, the Indian Child Welfare case manager shall conduct a complete home study (including background checks on all members of the household over the age of 16) 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 case manager may also review the child's previous court record, if any. The guardianship report shall be in writing and contain the professional opinions of all personnel consulted.

F. **Guardianship Home Study Report—Service.** The Indian Child Welfare case manager shall file the guardianship report with the Court at least ten (10) days before the hearing. The Court Clerk shall then serve all parties to the proceeding at least five (5) 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 1.03F, Testimony, Sections 1.03G through J, Rules of Evidence, Section 1.03K, Admissibility of Statements, and Sections 1.03L through M, Questioning Witnesses, Section 1.03N, Written Testimony, and Section 1.03O, 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 Hoh Indian Tribe;
3. A member of the Hoh community, who may be ineligible for enrollment, who has been recognized by the Business Committee as being a member of the community;
4. A member of another Indian tribe;
5. 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 Hoh Indian Tribe, the Indian Child Welfare case manager may assist the parent in making application for enrollment of the youth to the Hoh 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 Hoh Tribe if the child is enrolled or eligible for enrollment in the Hoh Tribe;
2. The guardian may not consent to any procedure for sterilization unless deemed medically necessary to protect the life of the youth;
3. The guardian shall not move outside a fifty (50) mile radius of the Hoh community without Court approval upon notice and hearing; and
4. 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. Letters of Guardianship. Upon entering an Order of Guardianship, the Court may cause to be prepared "Letters of Guardianship" to be used by the Guardian to obtain any necessary services for the youth.

3.03 Annual Review

Court Review. The guardianship may be subject to an annual review for the first five (5) years following the Order of Guardianship. At each annual review, the appointed Guardian shall provide a "Guardianship Yearly Progress Report" (blank form to be provided by the ICW Department, See Exhibit "C") to be filed with the Court no later than one week before the scheduled hearing. Following five (5) years of successful annual reviews, the guardianship shall not be subject to periodic or continuing supervision, unless a motion is made for cause shown.

3.04 Vacate or Terminate a Guardianship

Vacate or Terminate a Guardianship. A Guardianship naturally terminates when a child reaches the age of eighteen (18), unless that child could be considered a vulnerable adult. Otherwise, a Guardianship may usually only be vacated or terminated upon the finding by clear and convincing evidence that the following has occurred:

1. Voluntary relinquishment from the Guardian;
2. Finding of Child Abuse and/or Neglect by the appointed Guardian; or
3. Death of the Guardian.

The biological parent(s) will have the opportunity to appeal a Guardianship by petition once within the first twelve months, and then once every two years thereafter. The burden of proof will be on the petitioner to prove that the Guardianship is no longer in the child's best interests. The standard of proof shall be by clear and convincing evidence. The burden of the Court costs shall be upon the petitioner.

Chapter 4 TERMINATION OF PARENTAL RIGHTS

Sections:

4.01 Policy.

4.02 Starting an action for termination of parental rights.

4.03 Termination Hearings

4.01 Policy

The Hoh Tribe of Indians has not traditionally provided for the termination of a parent's rights. It is currently the custom and policy of the Tribe to view involuntary termination of a parent's rights as an absolute last resort, reserved for very limited circumstances. This chapter addresses both voluntary and involuntary terminations.

4.02 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, birth date, residence, and tribal status of the youth who is the subject of the petition;
2. The name, birth date, residence, and tribal status, if known, of the youth's parent(s), guardian and/or custodian;
3. If the youth is residing with someone other than a parent, the location and length at that location (unless confidential); 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 1.12, 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 and/or legal representative;
2. The youth's parent(s), guardian, custodian and/or legal representative;
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 Case Manager, in consultation with the social services staff, shall prepare a pre-termination report. In preparing the report the Indian Child Welfare case manager 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 Case Manager may also review any of the child's previous court record. In addition, the Indian Child Welfare Case Manager must obtain from the Hoh Tribal Business Committee any recommendation it may have as to disposition and any other relevant issues. Any HTBC member who is related to any of the parties to a termination action shall recuse themselves from the discussion. 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 case manager shall file the pre-termination report with the Court at least twenty (20) days before the hearing. The Court Clerk shall serve 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.

4.03 Termination Hearings.

A. 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.

B. Termination Hearing—Conduct. The hearing shall be private and closed. The following procedural rules apply: Section 1.03(F), Testimony, Sections 1.03(G) through (J), Rules of Evidence, Section 1.03(K), Admissibility of Statements, Sections 1.03(L) through M, Questioning Witnesses, Section 1.03(N), Written Testimony, and Section 1.03(O), 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.

C. Grounds for Termination and Burden of Proof. The Court may terminate a person's parental rights only when the following conditions have been proven 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 either consented to the termination of his or her parental rights under the terms of this chapter or that that involuntary termination is legally necessary and appropriate; and
4. That the parent is responsible for abuse of the youth as defined in this section.

D. Abuse. Abuse as a condition of termination of parental rights means, but is not limited to:

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

E. 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 any attorney and/or the Hoh social services or ICW 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.

F. 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.

G. Enrollment Prior to Entry of Termination Order. If a youth is eligible for enrollment in the Hoh Tribe, the Indian Child Welfare case manager shall submit an application for enrollment of the youth to the Hoh enrollment clerk prior to any final order terminating parental rights.

Chapter 5 ADOPTION

Sections:

5.01 General provisions.

5.01 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 an adoptive parent. 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:

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 4, 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 1.12, 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) and/or legal representative;
2. The youth and/or legal representative;
3. The youth's parent(s), guardian, custodian and/or legal representative;
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, including any other Indian Tribe in which the youth may be enrolled or eligible for enrollment.

F. Pre-Adoption Report. The Indian Child Welfare Case Manager, in consultation with appropriate social services professionals, shall prepare a pre-adoption report. In preparing the report, the Indian Child Welfare case manager 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. Criminal background check on all persons living in the home who are over the age of sixteen (16);
3. The parent(s) of the youth;
4. The home environment, family life, health facilities and resources of the petitioner(s);

5. The youth's cultural heritage and tribal status;
6. 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);
7. The recommendation, if any, of the Hoh Tribal Business Committee regarding the adoption; and
8. 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 case manager and appropriate social services professionals as the Court deems necessary.

G. Pre-Adoption Report—Service. The Indian Child Welfare case manager shall file the pre-adoption report with the Court at least ten (10) days before the hearing. The Court Clerk shall serve all parties to the proceedings at least five (5) 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 1.03(F), Testimony, 1.03(G) through (J), Rules of Evidence, Section 1.03(K), Admissibility of Statements, Sections 1.03(L) through (M), Questioning Witnesses, 1.03(N), Written Testimony, and 1.03(O), 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 Hoh Tribal Business Committee 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.

P. Cultural Contacts. The Adoptive Parents shall be encouraged to help the child maintain positive relationships with the biological family and the Tribe. However, the adoptive parents shall have the exclusive right and power to decide terms, if any, of visitation by any person with the youth.

Chapter 6 TRUANCY POLICY AND PROCEDURES

Sections:

6.01 Title.

6.02 Statement of policy and purpose.

6.03 Jurisdiction.

6.04 Authority of the Tribal Business Committee.

6.05 Enforcement.

6.06 Severability.

6.07 Violations.

6.08 Attendance requirement.

6.09 Procedures for intervention in matters of truancy.

6.10 Failure to attend school.

6.11 Contributing to the delinquency of a minor.

6.01 Title.

This chapter shall be known as the Hoh Truancy Code.

6.02 Statement of policy and purpose.

It is the policy of the Hoh 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).

6.03 Jurisdiction.

A. The provisions of this Truancy Code apply to enrolled tribal members who are required by Washington State law to attend school 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 fullest extent allowed by applicable law.

6.04 Authority of the Tribal Business Committee.

A. The Hoh Tribal Business Committee is the Governing Body of the Hoh Tribe of Indians by the authority of the Constitution and Bylaws of the Hoh Tribe as approved and adopted by the General Body and the Secretary of the Interior.

B. The Hoh Tribal Business Committee 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 Business Committee, which may delegate its authority to the ICW department, Education department and/or Tribal Law Enforcement.

6.05 Enforcement.

The ICW department, Education department and Tribal Law Enforcement officers are authorized to investigate and enforce suspected violations of this Code.

6.06 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.

6.07 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.

6.08 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 6.10), 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.

E. Any student who has either five unexcused 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.

6.09 Procedures for intervention in matters of truancy.

A. The ICW and/or Education Department ("department(s)") shall implement procedures, as adopted by the Tribal Business Committee, for intervention in matters of truancy.

B. The department(s) shall, from time to time, suggest appropriate revisions or amendments to the procedures for consideration by the Tribal Business Committee.

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 department(s) implement(s) this Code.

6.10 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 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 ICW or Education department 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 ICW/Education Department(s):

- i. Mandatory tutoring;
- ii. Weekly and/or daily school progress reports with copies to parent(s) or guardian(s);
- 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 Hoh Tribe's school counselor;

b. Penalties Administered by Tribal Law Enforcement:

- i. Fines (Refer to penalty schedule 7.08, below);
- ii. Community service;
- iii. House arrest;
- iv. Electronic monitoring;
- v. Juvenile detention.

6.11 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 ICW/Education Department(s):

- 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;
- v. Monthly and/or weekly contact with the Hoh 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 Tribal Law Enforcement:

- i. Fines (Refer to penalty schedule 7.08, below);
- ii. Community service;
- iii. House arrest;
- iv. Electronic monitoring;
- v. Detention.

Chapter 7 CURFEW CODE

Sections:

7.01 Title.

7.02 Purpose.

7.03 Jurisdiction.

7.04 Authority of Tribal Business Committee.

7.05 Enforcement.

7.06 Violations.

7.07 Definitions.

7.08 Penalties and conditions.

7.01 Title.

This title shall be known as the “Hoh Curfew Code.”

7.02 Purpose.

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

7.03 Jurisdiction.

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

7.04 Authority of Tribal Business Committee.

The Hoh Tribal Business Committee is the governing body of the Hoh Tribe of Indians by the Authority of the Constitution and Bylaws of the Hoh Tribe as adopted by the General Body and approved by the Secretary of the Interior.

7.05 Enforcement.

Tribal Law Enforcement Officers are authorized to investigate and enforce suspected violations of this chapter.

7.06 Violations.

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

7.07 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:

1. Ages 0-7 always under adult control;
2. Ages 8-12 9:00 p.m. on school nights; 10:00 p.m. on non-school nights;
3. Ages 13-15 10:00 p.m. on school nights; 11:00 p.m. on non-school nights;

4. Ages 16-17 10:00 p.m. on school nights; 12:00 midnight on non-school nights.

“Adult 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.

7.08 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	Parent(s)/guardian(s) charged with failure to supervise	\$25.00
	Child charged with curfew violation	\$25.00
16-17	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	Parent(s)/guardian(s) charged with failure to supervise	\$50.00
	Child charged with curfew violation	\$50.00
16-17	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
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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	Parent(s)/guardian(s) charged with failure to supervise	\$100.00
	Child charged with curfew violation	\$100.00
16-17	Parent(s)/guardian(s) charged with failure to supervise	\$100.00
	Child charged with curfew violation	\$100.00

Fees may be paid through community service or be taken out of the parent and/or child's per capita payment if not made within 60 days of being assessed by the Court.

Chapter 8 Emancipation

8.01 When Permitted

8.02 Eligibility

8.03 Petition

8.04 Consent of Parent(s), Guardian(s) or Custodian(s)

8.05 Appointment of Guardian ad Litem

8.06 Authority of Emancipated Minor

8.01 When Permitted

The Youth Court may declare a youth emancipated either pursuant to a Petition for Emancipation, or as a dispositional alternative if the youth:

- A. Wishes to be free from parental control and protection and longer needs that control and protection; or
- B. Is a Youth-In-Need-Of-Care as defined by this Code and the youth meets all of the requirements set forth in section 8.02, below.

8.02 Eligibility

A youth is not eligible for emancipation unless he or she:

- A. Is at least sixteen (16) years of age;
- B. Is self-supporting;
- C. Understands the consequences and responsibilities that result from being free from parental control and protection; and
- D. Demonstrates fulfillment of requirement 8.02(C) above by presenting to the Court an acceptable plan for independent living.

8.03 Petition

The Petition for emancipation shall contain:

- A. The name, date of birth and address of the youth;
- B. The name and address of each living parent, guardian or custodian;
- C. The reasons why emancipation would be in the best interests of the youth; and
- D. Why emancipation is sought.

8.04 Consent of Parent(s), Guardian(s) or Custodian(s)

The youth must obtain the consent of each living parent, guardian or custodian having control over the person and/or property of the youth. If the person who is to consent to the petition is unavailable or his or her whereabouts are unknown, or if a parent or guardian or custodian unreasonably withholds consent, the Court, acting in the best interests of the youth, may waive this requirement.

8.05 Guardian ad Litem

Prior to entry of any order of Emancipation, the Court may appoint a Guardian ad Litem for the youth to represent his or her interests before the court.

8.06 Authority of Emancipated Youth

Emancipation may be for either general or limited purposes. Except for specific constitutional and statutory age requirements for voting, military service and use of alcoholic beverages, a youth for general purposes has the power and capacity of an adult. This includes but is not limited to the following:

- A. The right to be domiciled where he or she desires;
- B. The right to receive and control all earnings;
- C. The capacity to sue and be sued; and
- D. The capacity to contract.

What is Child Abuse or Neglect?

Child abuse or neglect means the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child under circumstances which indicate that the child's health, welfare, and safety is harmed. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

(1) Physical abuse means the non-accidental infliction of physical injury or physical mistreatment on a child. Physical abuse includes, but is not limited to, such actions as:

- (a) Throwing, kicking, burning, or cutting a child;
- (b) Striking a child with a closed fist;
- (c) Shaking a child under age three;
- (d) Interfering with a child's breathing;
- (e) Threatening a child with a deadly weapon;
- (f) Doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks or which is injurious to the child's health, welfare and safety.

(2) Physical discipline of a child, including the reasonable use of corporal punishment, is not considered abuse when it is reasonable and moderate and is inflicted by a parent or guardian for the purposes of restraining or correcting the child. The age, size, and condition of the child, and the location of any inflicted injury shall be considered in determining whether the bodily harm is reasonable or moderate. Other factors may include the developmental level of the child and the nature of the child's misconduct. A parent's belief that it is necessary to punish a child does not justify or permit the use of excessive, immoderate or unreasonable force against the child.

(3) Sexual abuse means committing or allowing to be committed any sexual offense against a child as defined in the criminal code. The intentional touching, either directly or through the clothing, of the sexual or other intimate parts of a child or allowing, permitting, compelling, encouraging, aiding, or otherwise causing a child to engage in touching the sexual or other intimate parts of another for the purpose of gratifying the sexual desire of the person touching the child, the child, or a third party. A parent or guardian of a child, a person authorized by the parent or guardian to provide childcare for the child, or a person providing medically recognized services for the child, may touch a child in the sexual or other intimate parts for the purposes of providing hygiene, child care, and medical treatment or diagnosis.

(4) Sexual exploitation includes, but is not limited to, such actions as allowing, permitting, compelling, encouraging, aiding, or otherwise causing a child to engage in:

(a) Prostitution;

(b) Sexually explicit, obscene or pornographic activity to be photographed, filmed, or electronically reproduced or transmitted; or

(c) Sexually explicit, obscene or pornographic activity as part of a live performance, or for the benefit or sexual gratification of another person.

(5) Negligent treatment or maltreatment means an act or a failure to act on the part of a child's parent, legal custodian, guardian, or caregiver that shows a serious disregard of the consequences to the child of such magnitude that it creates a clear and present danger to the child's health, welfare, and safety. A child does not have to suffer actual damage or physical or emotional harm to be in circumstances which create a clear and present danger to the child's health, welfare, and safety. Negligent treatment or maltreatment includes, but is not limited, to:

(a) Failure to provide adequate food, shelter, clothing, supervision, or health care necessary for a child's health, welfare, and safety. Poverty and/or homelessness do not constitute negligent treatment or maltreatment in and of themselves;

(b) Actions, failures to act, or omissions that result in injury to or which create a substantial risk of injury to the physical, emotional, and/or cognitive development of a child; or

(c) The cumulative effects of consistent inaction or behavior by a parent or guardian in providing for the physical, emotional and developmental needs of a child's, or the effects of chronic failure on the part of a parent or guardian to perform basic parental functions, obligations, and duties, when the result is to cause injury or create a substantial risk of injury to the physical, emotional, and/or cognitive development of a child.

This excerpt from Washington Administrative Code 388-15-009 is utilized to help provide guidance for our community, law enforcement, and our judicial system. This guidance in no way waives or weakens the sovereign immunity of the Hoh Tribe of Indians.

“Exhibit B”

“Safety Assessment”

Instructions for Indian Child Case Manager: If any of the following eight questions responds with a “Yes” the child is at risk of serious and immediate harm which could result in death, life endangering illness, or injury requiring medical attention, or result in traumatic emotional harm or severe developmental harm which could have lasting effects on a child’s well being. A “yes” answer means the information available to the manager suggests or demonstrates the statement is probably true and has supporting information. This assessment should be completed immediately following the initial face to face contact with the child and documented for our Hoh Tribal Court.

1. Has there been an incident of high-risk physical abuse, sexual abuse or neglect of any child in the family in the last 90 days (consider the referral)?
2. Does a caretaker of any child within the family or a person with frequent access to the child have a history of serious violence toward children, history of sexual abuse of children, or a history of exploitation of children?
3. Is there a pattern of neglect/ incidents involving any child in the family, which is escalating in severity?

** Although this question is primarily concerned with Child Abuse and/or Neglect related incidents, the manager is reminded not to discount a series of injuries that may have been labeled “accidents” but which continue to escalate in severity.*

4. Have there been dangerous acts (including severe domestic violence), omissions or plausible threats by a caretaker or person with frequent access to the child that have placed the child at risk of serious harm in the last 90 days (consider current referral)?

** Adjudication is not required. Consider offenses involving substance abuse, gangs, and other actions that may be considered “child endangering”.*

5. Is there a caretaker whose judgment, impulse control, reality contact, and /or ability to parent is severely impaired at the present time due to substance abuse, mental illness, developmental delay or other condition?

** This determination relies mostly on observation and/or input from credible sources including friends and family members.*

6. Is there an individual with frequent access to the child who is a Registered Sex Offender or who has been convicted of a felonious assault in the last five years?
7. Does the child express fear of people living in or frequenting the home?

** Such fear must relate to a real likelihood of Child Abuse and/or Neglect in the near future and /or retaliation by the caretaker for the child's cooperation with Indian Child Welfare Office, Child Protection Services, Law Enforcement and etc.*

8. Is there any other concern that places a child in this home at risk of serious and immediate harm? If so what is it?

** This question is intended to allow the manager to include any dangerous situations, actions, and/or omissions that are not addressed in the previous questions.*

9. Has a "Family Group Conference" made a contract on how to help the child and family? If so what is the contract or plan?

“Exhibit C”



Yearly Guardianship Progress Report

Childs Name:
Placement/Guardianship Family Name:
Date of Placement:

**Yearly Guardianship Progress Report is due the Indian Child Welfare Supervisor 30 days prior to the annual date of guardianship.*

From: To:

<p><u>Medical/Dental/ Vision/ Mental Health</u></p> <p>Directions: Summarize visit if professional seen this year</p> <p>Doctor Name: Address: Phone:</p> <p>Dentist Name: Address: Phone:</p> <p>Optometrist Name: Address: Phone:</p> <p>Mental Health Providers Name: Address: Phone:</p>

Hygiene:

This year have you observed any issues you maybe be facing concerning hygiene. (Bathing, brushing teeth, clean clothes, etc)

Continued on next page

Peer Relations:

How did your youth relate to other his/her own age this year? Does he/she participate well in organized play or sports? Does he/ she have many friends? How does your child get along with siblings in the home or other family members children outside the home, (example cousins)? Please be specific.

School:

Did your child have difficulties in school this year? Where there any school academic concerns mention to you (reducing report card surprises)? Does your child respect school Staff? Does your student find it difficult to concentrate on school work? Please indicate any concerns you may be having.

Nutrition:

Is your child eating a balanced diet with you? Do you have trouble getting your child to eat or perhaps feel your child over eats or hordes food? Please describe any concerns you may have.

Behavioral:

What types of daily behavioral issues are you facing? Why do you think your child is doing this? What measures have you taken to try to correct the problem? Please be as specific as possible and include examples when possible. Have you filed any incident reports with Hoh ICW when this behavior has become a problem? AND What positive things have your youth accomplished his year?

Independent

Living

Skills:

Does your child demonstrate that he or she can be entrusted to function independently for short periods of time? For example: Does not need to be told to brush teeth, can make a snack without needing assistance.

Visitation: If there was a visit(s)- how did your youth respond to his/her visit(s) this year? Did he/she appear to behave or react differently with different biological parents?

Participation in Cultural Events/Activities:

Other comments or concerns: