

Ordinance Number 8.001.
Amended by Resolution No. 2005-361, dated September 16, 2005;
Resolution No. 2010-276, dated July 16, 2010.

Original Date: January 16, 1993
Subject: Juvenile Code

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PART I GENERAL PROVISIONS

§ 8.001. PURPOSE AND POLICY

(a) Purpose - The purpose of this Code is to ensure the future of the Confederated Tribes of the Siletz Indians of Oregon ("Siletz" or "Tribe") by establishing procedures to protect the best interests of Siletz children and of the Tribe and its customs and culture, as provided for by the Siletz Constitution.

(b) Policy - It shall be the policy of the Tribe, with regard to the welfare of its children, to:

- (1) Protect the best interests of Siletz children by preventing the breakup of Siletz families, and promote the stability and security of the Tribe by establishing tribal standards for the conduct of child custody proceedings involving Siletz children;
- (2) Protect and strengthen the cultural ties and ethnic identity of its children wherever possible;
- (3) Secure to each child coming before the Tribal Court the care, guidance, and control, preferably in his or her own home, that will serve both the child's best interests and welfare, and the best interests of the Siletz Tribe;
- (4) Compel the parent(s), guardian or custodian of a Siletz child to provide a proper physical and emotional home environment for the child, and assist

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the family in making changes or improvements in the home environment where necessary to protect the health, safety and development of all Siletz children;

- (5) Secure to any child removed from his or her home the care, guidance, and control as nearly equivalent as that which the child should have been given by his or her parents to help the child develop into a well-adjusted, responsible adult;
- (6) Foster cooperative intergovernmental relations regarding the welfare of Siletz children between the Siletz Tribe and the State of Oregon, and between the Siletz Tribe and other states and tribes;
- (7) Provide child welfare services to Siletz children and families that are in harmony with the traditions, laws and cultural values of the Tribe; and
- (8) Preserve the opportunity for Siletz children to learn about their culture and heritage, and to become productive adult members of the Siletz tribal community by experiencing their culture on a permanent basis.

(c) Liberal Construction - This Code shall be liberally construed to achieve these purposes.

§ 8.002. DEFINITIONS

(a) Interpretation - All terms used in this Code shall be interpreted broadly to encourage the jurisdiction of the Siletz Tribal Court over children who come under the protection of this Code and to help the Tribal Court act to protect the best interests of Siletz children and families. This Code shall be interpreted in light of Siletz tribal laws, customs, and traditional child-rearing practices. Terms not specifically defined in this Code shall be interpreted according to their normal usage, or as defined in the Indian Child Welfare Act, 25 USC ' ' 1901 et seq., as appropriate.

(b) Definitions - As used in this Code, the terms listed below shall have the following meanings:

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- (1) Abandon - When a parent leaves a child without adequate communication or fails to support a child, and there is no indication of the parent's willingness to maintain or assume his or her parental role.
- (2) Adult - Any person subject to the jurisdiction of the Siletz Tribe who is eighteen (18) years of age or older or who has been married or otherwise emancipated.
- (3) Best Interests of the Child - A variety of factors concerning a child's welfare, including but not limited to: the ability of the Tribe and the community to provide for the care of the child; the wishes of the Tribe, the child, the parents, or other party; the child's adjustment to home, school, and the community; the mental, emotional and physical health of the persons involved; and/or the preservation of the connection between a Siletz child and his or her culture, family, and Tribe in a setting that is stable, secure, safe, healthy and emotionally, spiritually, socially, and intellectually enriching, and in which the special needs of that child, if any, may be met, or the creation of such a connection if one does not currently exist.
- (4) Case Plan - A written document for each child under the jurisdiction of the Court, which shall include a detailed service plan designed to protect the best interests of the child and the Tribe by addressing the conditions that led to the removal of the child from the home, meeting the needs of the family, and preventing further abuse or neglect of the child.
- (5) Child - a person who has not yet reached eighteen (18) years of age and who has not been married or emancipated and who is found or located within the Siletz Tribe's service area.
- (6) Child Custody Proceeding - A proceeding concerning a child who is alleged or found to be a child-in-need-of-care, including but not limited to proceedings involving the emergency custody, foster care, guardianship, parental rights, adoption, or emancipation of the child, and the review of any such action. Child custody proceeding governed by this Code does not

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include custody disputes between parents, including divorce custody proceedings.

- (7) Child in Need of Care - A child who has been found to be in one or more of the following situations:
- (A) An abused child who has suffered or is likely to suffer a non-accidental physical injury which causes or creates a substantial risk of death, disfigurement, impairment of bodily functions, or serious physical or emotional harm, as determined by appropriate medical or professional personnel, or who has been sexually abused or subjected to the threat of sexual abuse;
 - (B) A neglected child whose parent(s), guardian or custodian has failed to or is unable to carry out their parental, guardianship, or custodial duties and where the child's physical or emotional health, safety, welfare or intellectual development are harmed or threatened as a result. Neglect may include the failure of a parent or other custodian to take advantage of reasonably available public assistance and service programs designed to help provide for the needs of the child where the parent(s), guardian or custodian cannot meet the child's needs on their own;
 - (C) An abandoned or dependent child whose parent(s), guardian or custodian has left the child without making reasonable arrangements for the care and supervision of the child, that the physical or emotional health of the child is affected or threatened;
or
 - (D) A child who has no parent or other custodian able, willing and available to fulfill parental duties or who is beyond the control of his/her parents, guardian or other person having custody of the child.
- (8) Child Protection Team- the tribal administrative entity responsible for monitoring and reviewing the services provided to Siletz children and their families involved in the child abuse and neglect proceedings.

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- (9) Court or Tribal Court - The Siletz Tribal Court when exercising jurisdiction under this Code.
- (10) Custodian - A person, other than a parent or guardian, to whom a parent or parents have given or whom has assumed such custody, pursuant to tribal custom or tradition, temporary physical care, custody and control of a child, including the duty to provide food, clothing, shelter, medical care, education and supervision to the child.
- (11) Customary Adoption - A tribal legal process that gives a child a legally recognized permanent parent-child relationship with a person other than the child's biological parent and that modifies the parental rights of the child's biological parent.
- (12) Disposition - A determination by the Court of a plan for a child that may include but is not limited to legal custody, physical custody, placement, and services to the child and family.
- (13) Domicile - The permanent residence of a person. The determination of a person's domicile and residence shall be in accordance with Tribal law and custom. The domicile of a child is presumed to be that of the child's custodial parent unless proven otherwise.
- (14) Extended Family Member - A person who has reached eighteen (18) years of age and who is the child's grandparent, aunt, or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, step-parent, godparent, or traditionally appointed custodian, or who is recognized by the family as a family member.
- (15) Foster Care - A social service that provides substitute family care for a child for a planned period of time when the child's parent, guardian, or custodian cannot care for the child. Out-of-home care includes voluntary and involuntary placements, short or long-term placements, and temporary or emergency placements with a family, group home or institution.
- (16) Guardian - A person other than a child's parent who is by law responsible for the care and custody of the child and/or the child's estate. A guardianship gives a person who is not a child's parent the right to care for

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the child and perform all or some of the duties of a primary caregiver, without completely excluding the parent from the child's life.

- (17) Guardian Ad Litem - An adult appointed by the Court to represent the best interests of a child. The Court shall appoint a guardian ad litem when a parent cannot exercise sound judgment on behalf of a child or where the Court determines that someone other than or in addition to the ICW Program is needed to represent the best interests of the child.
- (18) ICW Program: The department within the Tribe's Program I Department responsible for investigating child neglect and abuse cases arising under this ordinance, providing services to families involved with child abuse and neglect cases under the provisions of this ordinance, and representing and testifying on behalf of the Tribe in court proceedings involving Siletz children and families.
- (19) ICWA Transfer Committee - A committee, composed of the Programs I Manager, the Tribal General Manager, and the Tribal Chairperson, which shall have authority to the transfer of child custody proceedings to the Tribal Court or transfer a child custody proceeding to State Court in appropriate circumstances
- (20) Indian Tribe - Any Indian tribe, band, nation or other organizational group, or a community of Indians traditionally recognized as an Indian tribe by the Tribal Council or recognized as eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any native groups in Alaska that are organized pursuant to the Alaska Native Claims Settlement Act, as amended.
- (21) Indian Child - A child who is under eighteen (18) years of age and who is enrolled in a federally recognized Indian tribe; or eligible for enrollment in a federally recognized Indian tribe and the biological child of an enrolled Indian of the federally recognized Indian tribe; or considered by the Tribe to be a member by the Tribe.
- (22) Least Restrictive Placement - An out-of-home placement for a child that is most like a family environment and that is near the home of child's

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parent(s), guardian or custodian and that meets the best interests, special needs or health and safety of the child.

- (23) Legal Representative - An attorney, spokesperson, guardian ad litem, or other legal counsel.
- (24) Modification of Parental Rights – Permanently and legally limiting the parental rights of a person to a child. A modification of parental rights may include but is not limited to custody determinations, visitation, information sharing, contact with extended family members, and participation in decision-making about the child’s education, medical treatment, military services, marriage, assets, and upbringing.
- (25) Parent - Includes biological or adoptive parents, but does not include persons whose parental rights have been terminated or any unwed father whose paternity has not been acknowledged or established in one of the following ways:
- (A) Being identified as the father on the child’s birth certificate;
 - (B) By acknowledging paternity to in accordance with the requirements of the Tribal Enrollment Ordinance or to a court of competent jurisdiction; or
 - (C) Through formal paternity proceedings under tribal or state law.
- (26) Siletz Service Area: The eleven counties of the State of Oregon deemed equivalent to as Indian reservation for the Siletz Tribe and its members by Congress for the purpose of qualifying for federal services and benefits provided to the Siletz Tribe and its members by virtue of their status as tribal members. The counties which comprise the Siletz Service Area include: Lincoln; Yamhill; Polk; Lane; Marion; Multnomah; Washington; Clackamas; Tillamook; Benton; and, Linn. Additional counties may be added to the Tribe’s Service Area by any appropriate means.
- (27) Reservation - Indian country as defined in Section 1151 of Title 18 USC, and any lands not included under that definition, title to which is either held by the United States in trust for the benefit of any Indian tribe or

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person or held by any Indian tribe or person subject to a restriction by the United States against alienation; the Tribe's service area; or the Tribe's Treaty established Reservation as established by Executive Order on November 9, 1855.

- (28) Shelter Care - A home or other living facility used as a temporary living place for a child pending a determination of the custody of child, or a residential facility designed for a long-term placement that does not physically restrict the child.
- (29) Siletz Child - A child who is under eighteen (18) years of age and who is the child of a Siletz member, or eligible for membership in the Siletz Tribe, or a child who is under eighteen (18) years of age and who is enrolled in the Siletz Tribe; or who is recognized as a member of the Siletz Tribe.
- (30) Tribal Representative - The ICW Program employee, tribal attorney, tribal law enforcement officer, or other tribal employee or officer responsible for carrying out the duties set forth in this Code.

§ 8.003. JURISDICTION

(a) Tribal Court Jurisdiction - The Court shall have original jurisdiction over any child custody proceeding that involves:

- (1) Any Siletz Child who resides or is domiciled within the Service Area of the Tribe;
- (2) Any Siletz child who is enrolled or is eligible for membership, regardless of his or her residence or domicile;
- (3) Any Siletz Child who has been placed in the temporary care of a Siletz member or in any care facility licensed by the Tribe for placement of Indian children; or
- (4) Any Indian child as defined by the Indian Child Welfare Act, who resides within the Siletz Reservation.

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(b) Jurisdiction Over Parents, Adults, and Guardians and Parties - In order to fulfill the purposes of this Code, the Court shall have jurisdiction over parents, guardians, legal custodians and other parties to the proceeding and shall have the authority to make such orders for parents, guardians, legal custodians, and parties that are necessary to protect the safety and welfare of a child before the Court pursuant to this Code.

(c) Concurrent Jurisdiction - When state, federal or other tribal courts have jurisdiction over any of the matters provided for in this Code, the Court shall have concurrent jurisdiction over the same matters, to the extent consistent with federal law.

(d) Limitations Based on Tribal Priorities and Resources - The limitations on jurisdiction in this section are not intended to reflect the Tribe's view of the legally permissible limits of jurisdiction, but are merely designed to limit tribal activity in this area in accordance with tribal priorities and resources.

§ 8.004. JURISDICTIONAL AGREEMENTS

The Tribe may enter into intertribal and tribal-state agreements regarding jurisdiction over child custody proceedings either on a case by case or general basis as it deems appropriate and necessary to protect the best interests of Siletz children and other children protected under the agreement.

§ 8.005. CONSOLIDATION OF CASES

When more than one child is involved in the same situation that may later be found to involve abuse or neglect, the Court may consolidate the proceedings, except that the Court may choose to hold separate dispositional hearings for the children if appropriate and in the best interests of the children.

§ 8.006. PARTIES TO CHILD CUSTODY PROCEEDINGS

(a) Parties - The following are parties to child custody proceedings conducted pursuant to this Code:

- (1) The child;
- (2) The child's parent(s), guardian and/or custodian;

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- (3) The ICW Program;
- (4) The guardian ad litem; and
- (5) Any other person the Court finds necessary for the proper resolution of the matter.

(b) Rights of Parties - Parties to child custody proceedings are entitled to certain rights, with some restrictions and limitations necessary to protect the health, safety and best interests of the child, including the following rights:

- (1) To receive notice of the proceedings;
- (2) To retain a legal representative of their own choosing and at their own expense;
- (3) To appear at hearings, present evidence, and call, examine and cross-examine witnesses;
- (4) To request placement and/or custody of child;
- (5) To inspect records; and
- (6) To request a hearing or to appeal a final order.

§ 8.007. RESPONSIBILITIES OF PARENTS, GUARDIANS, AND CUSTODIANS

(a) Parties to a Petition - The parent(s), guardian or custodian of a child within the jurisdiction of the Tribal Court shall be made a party to a petition if the child is alleged to be a child-in-need-of-care.

(b) Treatment or Counseling - The Court may order a child's parent(s), guardian or custodian to participate in services that would benefit the child including but not limited to submit to counseling, or, if the Court has committed the child to an institution, to participate in any institutional treatment or counseling program, including attendance at the site of the institution.

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(c) Reasonable Costs - The Court shall order a child's parent(s), guardian or custodian to pay the reasonable costs or a portion of the costs of any court proceedings pursuant to this Code, and for the support, services benefitting, and treatment of the child, as the parent is financially able to pay, if:

- (1) The child is adjudicated to be a child-in-need-of-care; and
- (2) The Court orders that the child be placed with an agency, institution, or person other than the child's parent(s).

§ 8.008. MEDICAL EXAMINATIONS

The Court may order medical and/or psychological examinations of a child or any other party if the Court determines, after a hearing, that the party's medical or psychological health is relevant to the issues before the Court.

§ 8.009. PAYMENT OF FEES AND EXPENSES

(a) Filing and Service Fees - There shall be no fee for filing a petition under this Code, nor shall any tribal officer charge any fee for the service of process or for the officer's attendance in Court in any child custody proceeding.

(b) Witness Fees - Witness fees and expenses shall be payable in accordance with the Rules of the Court. Witness fees and expenses and the cost of publication of a summons shall, when approved by the Court, be paid by the parent(s), guardian or custodian of the child who is before the Court, or by the Tribe.

§ 8.010. CHILD'S TESTIMONY BY VIDEOTAPE

The Court may, within its discretion, permit a child to testify by videotape, or may take other steps to protect the child in proceedings conducted pursuant to this Code, where necessary to protect the best interests of the child.

§ 8.011. RECORDS MAINTENANCE AND CONFIDENTIALITY

(a) Records - A record of all hearings under this Code shall be made and preserved until the jurisdiction of the Court has ended.

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(b) Confidentiality of Records - All personal information, Court files, documents, and other materials associated with child custody proceedings conducted pursuant to Code, including the names of children, families or witnesses involved in the proceedings, shall be kept confidential unless released by order of the Court. These records shall not be open to inspection other than by Court personnel or by any person other than the following:

- (1) The child and his or her legal representative;
- (2) The child's parent(s), guardian or custodian and his or her legal representative;
- (3) The tribal representative and the tribal attorney;
- (4) Any other person who the Court determines has a valid reason to see the records and for whom the Court issues a written order detailing the reasons for permitting the person to review the records.

This confidentiality provision applies to all divisions and departments of the Tribe, including social service and law enforcement agencies. Disclosure of documents and material to authorized public agencies engaged in the performance of the official duties of those agencies, whether tribal, federal, or state, does not violate this section as required by applicable law.

(c) Maintenance and Release of Records - All records related to child custody proceedings conducted pursuant to this code shall be kept in a secure place by the Clerk of Court, and shall be released only pursuant to procedures developed by the Chief Judge of the Court.

(d) Oath of Confidentiality - Each person who inspects records pertaining to child custody proceedings pursuant to this Code is required to sign a written oath pledging to maintain the confidentiality of the records. Failure to obey this oath shall constitute contempt of court.

§ 8.012. MODIFICATION OF COURT ORDERS

(a) Modification of Court Order - The Court may modify, revoke or extend any order made pursuant to this Code upon the motion of any of the following persons:

- (1) The child or his or her legal representative;

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- (2) The child's parent(s), guardian, or custodian or his or her legal representative, if any; or
- (3) The tribal representative.

(b) Hearing - Any hearing to modify, revoke or extend a Court order shall be conducted pursuant to the Rules of Court.

§ 8.013. REQUEST FOR A NEW HEARING

A parent, guardian, or custodian of any child whose status has been adjudged in a child custody proceeding conducted pursuant to this Code, or any adult who is affected by a Court order or judgment in a child custody proceeding conducted pursuant to this Code, may at any time petition the Court for a new hearing on the grounds that new evidence has been discovered that was not known at the time of the original hearing and that could not have become available with due diligence. The Court may conduct a preliminary review of the proffered evidence to determine whether a new hearing is warranted. If the Court determines that there is new evidence that might affect its previous order or judgment, the Court shall order a new hearing and shall make a disposition of the case as is warranted by all of the facts and circumstances and by the best interests of the child.

PART II
TRANSFERS AND INTERVENTION

§ 8.014. POLICY REGARDING THE TRANSFER OF CHILD CUSTODY PROCEEDINGS TAKING PLACE IN STATE COURT

It shall be the policy of the Siletz Tribe to request the transfer of child custody proceedings involving Siletz children taking place in state court under the Indian Child Welfare Act of 1978, 25 USC § 1901 et seq. ("ICWA"), except where good cause exists to the contrary.

§ 8.015. PROCEDURE FOR TRANSFER

(a) Authority to Request Transfer - The ICWA Transfer Committee shall have sole authority to determine, by a majority vote, whether or not the Tribe will request the transfer of a child custody proceeding involving a Siletz child taking place in state court to the Tribal Court.

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- (1) The Committee's decision in each case shall be put into writing and shall be signed by all three Committee members.
- (2) If the Committee decides not to seek a transfer, the Committee may reconsider its decision at any time if new information is obtained or if changed circumstances require it.
- (3) It is within the Committee's discretion to request the transfer of a child custody proceeding for placement purposes only.

(b) Assessment and Recommendation - Within fourteen (14) days of receipt of notice of any kind that a Siletz child is the subject of a child custody proceeding in state court, the tribal ICW Program shall prepare an assessment of the child and the child's family situation, and shall make a written recommendation to the ICWA Transfer Committee concerning whether the case should be transferred from state court to the Tribal Court. The recommendation shall consider, among other factors:

- (1) The age of the child;
- (2) Any special needs of the family, if any;
- (3) The location and circumstances of the family;
- (4) Whether the state has made a serious attempt to reunite the family;
- (5) The availability of tribal or state services that can address the child's needs and that would either weigh in favor or against transfer;
- (6) The availability of a suitable tribal home for the placement of the child;
- (7) Whether financial assistance for the care of the child by a home that meets the placement preferences will continue to be available if the proceeding is transferred to the Tribal Court.

(c) Tribal Court Decision Regarding Transfer

- (1) If the ICWA Transfer Committee votes to seek transfer of a child custody proceeding, the tribal ICW Program shall petition the Tribal Court to

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issue an order indicating that the Court will accept the transferred child custody proceedings.

- (2) The Tribal Court shall give notice, by certified, return receipt mail, to all parties to the state court proceeding that a petition to accept transfer the proceeding has been filed. The notice shall include:
 - (A) The date, time and location of the Tribal Court hearing on the proposed transfer;
 - (B) A brief explanation of the subject of the hearing; and
 - (C) A statement that all parties to the state court proceeding shall be granted standing in the Tribal Court to express their views on whether the Tribal Court should accept or decline to transfer.
- (3) The Tribal Court shall consider the following factors in determining whether to accept the transfer:
 - (A) The child's emotional, cultural and family ties.
 - (B) The ability of necessary witnesses to appear in Tribal Court if adjudication is necessary; and
 - (C) The ability of the Tribe to provide necessary services to the child and the child's parent(s), guardian or custodian, including but not limited to counseling, medical treatment and transportation.
- (4) Tribal Court may decline to accept the transfer of a child custody proceeding if it finds that good cause exists to deny the transfer. The denial shall be based upon clear and convincing evidence that the transfer would not be in the best interests of the Tribe, the child, or the child's family.
- (5) The Tribal Court may impose conditions on its acceptance of a transfer, such as conditioning the transfer upon the state court's willingness to enforce tribal subpoenas or to order state employees to testify in Tribal Court if witnesses are beyond the Tribe's subpoena and jurisdictional

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authority, or imposing other conditions as are necessary to ensure that the Tribe will have access to all necessary evidence and witnesses in the Tribal Court proceedings.

- (6) If the Tribal Court issues an order indicating that it will accept the transfer, the ICW Program shall prepare a petition for the transfer and shall present the petition to the state court. The petition shall state that the Tribal Court has issued an order indicating that it will accept the transfer.

(d) Transfer - If the state court grants the petition to transfer the child custody proceeding to the Tribal Court, the Tribal Court shall immediately issue an order accepting the transfer, directing the tribal attorney to file a motion to transfer immediately and directing the state court to transfer its files concerning the proceeding to the Tribal Court upon the state court's grant of transfer.

(e) Transferred Proceedings Governed by Siletz Juvenile Code - Child custody proceedings that have been transferred to Tribal Court shall proceed pursuant to this Code.

§ 8.016. PETITION FOR TRANSFER BY A PARTY OTHER THAN THE TRIBE

(a) Party to File Petition - If the parent(s), guardian or custodian of a Siletz child, the child, the child's legal representative, or any other party petitions a state court to transfer a child custody proceeding involving the child to the Tribal Court, the transfer shall not be effective until accepted by the Tribal Court. It shall be the duty of the party petitioning for the transfer to file a petition with the Tribal Court for acceptance of the transfer.

(b) Assessment - Upon receipt of a petition for acceptance of a transfer from a party to a child custody proceeding, the Tribal Court shall refer the petition to the tribal ICW Program for an assessment. The tribal ICW Program shall have fourteen (14) days from the date of the referral to prepare a written assessment and to submit the assessment to the Tribal Court.

(c) Tribal Court Decision Regarding Transfer

- (1) The Tribal Court shall schedule a hearing on the petition for acceptance of the transfer at the earliest available time following the submission of the tribal ICW Program's assessment.

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- (2) The Court shall automatically grant standing to the Tribe as an interested party to express its views concerning whether the petition for acceptance of the transfer should be granted or denied.
- (3) The Tribal Court shall follow the procedures set forth in section 8.040(c)(2)-(5) regarding a hearing on the proposed transfer.
- (4) If the Tribal Court accepts the transfer, the Tribal Court shall enter a written order accepting the transfer and shall request that the state court transfer its files concerning the proceedings to the Tribal Court.

§ 8.017. TRANSFERS INVOLVING JURISDICTIONS OTHER THAN STATE COURT

(a) Proposed Transfers Involving Jurisdictions Other Than State Court

- (1) The Tribal Court may accept or decline the transfer of a child custody proceeding from any other court, tribunal, tribal council or other governing body, or administrative body.
- (2) The Tribal Court may transfer a child custody proceeding involving a child who is not a Siletz child to another jurisdiction.

(b) Transfer Procedures - The Tribal Court may transfer a proceeding from or to other jurisdictions in accordance with the following procedures:

- (1) Any person may petition the Tribal Court to transfer a child custody proceeding. The petition shall include:
 - (A) The name, address, age and tribal status, if known, of the child who is the subject of the proceeding; and
 - (B) A plain and concise statement of the reasons the transfer should be granted.
- (2) The Tribal Court shall hold a hearing on the transfer request within fourteen (14) days of the filing of the petition for transfer, unless a longer time is agreed upon.

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- (A) The Court shall provide written notice of the date, time and location of the transfer hearing to the child, the child's parent(s), guardian or custodian, and to the court, tribunal or other body from or to which the transfer has been requested.
 - (B) The notice shall be delivered by a tribal law enforcement officer or an appointee of the Court or mailed by the Court. If the notice cannot be delivered personally, the notice shall be delivered by certified mail or any other method reasonably designed to give notice to the required persons.
- (3) The child's best interests shall be the controlling factor in the Court's decision to accept or decline the transfer of any child custody proceedings concerning the child. The Court may also consider the wishes of the parent and the wishes of the child if he or she is fourteen (14) years of age or older.
 - (4) The Court may make any orders necessary to protect the best interests of the child pending the outcome of the transfer proceeding.
 - (5) If Tribal Court accepts or grants the transfer, the Court shall enter an order accepting or granting the transfer and shall arrange for the transfer of all files concerning the proceedings.

§ 8.018. INTERVENTION IN CHILD CUSTODY PROCEEDINGS

(a) Authority - The Tribe has the authority to intervene in any child custody proceeding taking place in any state or tribal court, pursuant to the ICWA or this Code.

(b) Procedure - The procedure for intervening in a child custody proceeding taking place in state court shall be as follows:

- (1) The ICWA Program will file the appropriate and necessary legal documents to intervene in child custody proceedings within fourteen (14) days receipt of notice of the proceeding.
- (2) The ICW Program or tribal attorney shall:

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- (A) Appear in the next state court proceeding concerning the child and make an oral motion to intervene in the proceedings; or
- (B) File an Entry of Appearance and Motion to Intervene with the state court.
- (3) Following intervention, the matter shall proceed under the guidance of the presiding state court judge. The tribal ICW Program shall monitor the case and represent the interests of the Tribe during the child custody proceedings in state court as appropriate.

(c) Intervention in Child Custody Proceedings in Jurisdictions Other Than State Court
If the ICWA Transfer Committee determines that intervention in a child custody proceeding taking place in a jurisdiction other than state court is in the best interests of the child and the Tribe, the tribal ICW Program shall intervene in the proceedings pursuant to applicable law.

PART III
CHILDREN IN NEED OF CARE

§ 8.019. POLICY

It shall be the policy of the Tribe that reasonable efforts shall be made to prevent or eliminate the need to remove a child from his or her home, and reasonable efforts shall be made to make possible a child's return to his or her home; provided however, that this policy shall not prevent the emergency removal of a child pursuant to this Code and efforts as set forth in this section shall not jeopardize the health or safety of a child.

§ 8.020. DUTY TO REPORT CHILD ABUSE AND NEGLECT

(a) Basis of Report - Any person who knows or has probable cause to suspect that a child has been abused or neglected shall report the suspected abuse or neglect to the ICW Program.

(b) Mandatory Reporters - The following persons are mandatory reporters and are required to report suspected child abuse or neglect:

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- (1) Physicians, nurses, dentists, optometrists, and other health professionals;
- (2) School principals, school teachers, and any other school officials;
- (3) Child day care center workers and other child care staff, including foster parent(s) and residential care, or institutional personnel;
- (4) Counselors, social workers, psychiatrists, psychologists, and other mental health professionals;
- (5) Peace officers and other law enforcement officials;
- (6) Judges, court counselors and clerks, and other judicial system officials;
- (7) Commercial film and photo processors; and,
- (8) Attorneys or spokespersons provided that an attorney/spokesperson is not required to make a report under this provision if the information is communicated to the attorney in the course of representing a client and the disclosure of the information would be detrimental to the client.
- (9) Tribal employees pursuant to Section 2.816 of Tribe's Personnel Policies.

(c) Anonymity - Any person who files a report of suspected child abuse or neglect may, upon request and approval of the Court, remain anonymous, except those persons who are mandatory reporters pursuant to section (b) of this section or other professional licensing standards.

(d) Immunity from Liability - All persons or agencies reporting known or suspected instances of child abuse or neglect in good faith shall be immune from either civil liability or criminal prosecution for making the report.

§ 8.021. INVESTIGATION AND EVALUATION OF REPORTS OF CHILD ABUSE AND NEGLECT

- (a) Receipt of a Report by Tribal Law Enforcement Officers

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- (1) Upon receiving a report of suspected child abuse or neglect, a tribal law enforcement officer shall immediately notify the ICW Program.
- (2) If requested by the ICW Program or if the ICW Program representative is unavailable, a tribal law enforcement officer shall immediately investigate the report and determine whether further action is necessary. The ICW Program and law enforcement officer may conduct their investigation jointly. Based on the investigation, a detailed written report shall be completed and a copy shall be sent to the tribal representative.
- (3) If the law enforcement officer reasonably believes that the child is in immediate and serious danger from his or her surroundings and that immediate removal is necessary for the child's safety or well being, the officer may take the child into emergency custody. If a Tribal Court judge is available and delay will not jeopardize the health or safety of the child, the law enforcement officer shall first request an emergency custody order pursuant to this Code.
- (4) A law enforcement officer who takes a child into custody without first obtaining an emergency custody order shall proceed as follows:
 - (A) The officer shall immediately notify the tribal ICW Program and request direction as to whether the child should be placed in emergency shelter care and if so, where;
 - (B) If the tribal ICW Program cannot be reached, the officer may place the child in emergency shelter care but shall continue attempts to notify the tribal ICW Program. Placement of the child shall be in a facility approved by the Tribe for emergency shelter care or with a relative of the child if the relative is known to the officer, the relative is not currently on probation or parole, ~~have~~ does not have known children in the care of any social services agency, and resides within the Tribe's service area.
 - (C) Immediate and continuing efforts shall be made by both the officer and the tribal ICW Program to notify the child's parent, guardian or custodian as to the circumstances surrounding the child's emergency custody.

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(b) Investigation of Report by Tribal ICW Program

- (1) Upon receiving a report of suspected child abuse or neglect or a notice from a tribal enforcement officer, the Tribal ICW Program shall immediately assess the report and determine whether to open a case. The ICW Program shall open a case if the representative has reasonable suspicion that the child who is the subject of the report has been or likely may be abused or neglected.
- (2) If the ICW Program opens a case, the ICW Program shall immediately initiate an investigation of the report to determine whether the best interests and health and safety of the child and the tribal community require that further action be taken. If necessary, the tribal representative may ask a law enforcement officer to conduct or assist with the investigation. The investigation shall cover the child's home environment, history and associations, the present condition of the child and the child's family, and shall make recommendations as to the child's future care. The tribal representative shall make conclusions as to the likely future of the family if no intervention occurs, and whether removal of the child from the family likely will be required. In cases involving the duty of financial support, the study shall include such matters as earnings, assets, financial obligations and employment.
- (3) Upon completion of the investigation, the tribal representative shall determine whether:
 - (A) No further action should be taken;
 - (B) To hold an informal resolution conference with the child and the child's parent(s), guardian, custodian, or legal representative to discuss alternatives to filing a petition alleging that the child is a child-in-need-of-care;
 - (C) To file a petition with the Court alleging that the child is a child-in-need-of-care;

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- (D) To seek an emergency custody order from the Court to take the child into emergency custody; or
- (E) Emergency removal and custody of the child is necessary without a Court order because the child is in immediate danger from his or her surroundings.
- (4) If the tribal representative determines that no further action shall be taken, the child shall be released immediately if the child is in emergency custody.
- (5) If the ICW Program determines that emergency custody of the child is necessary, the representative shall proceed pursuant to section 8.017 of this Code.

§ 8.022. VOLUNTARY CASES

(a) When Permitted - Any time before an adjudicatory hearing on a petition alleging that a child is a child-in-need-of-care, the tribal representative may hold an informal resolution conference with the child or the child's legal representative and the child's parent(s), guardian or custodian to discuss alternatives to filing a petition alleging that the child is a child-in-need-of-care if:

- (1) The admitted facts would bring the case within the jurisdiction of the Court;
- (2) An informal resolution of the matter would be in the best interests of the child, the child's family and the Tribe; and
- (3) The child or the child's legal representative and the child's parent(s), guardian, custodian voluntarily consent to an informal resolution.

(b) Written Agreement Between Parties - As a result of the informal resolution conference, the tribal representative may enter into a voluntary service agreement or agreements with the child or the child's legal representative and the child's parent(s), guardian or custodian to provide prevention services and assistance, without formal Court involvement, in a manner designed to promote family unity and social stability. The primary goal of the informal adjustment agreement shall be the child's safety.

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- (1) If a voluntary service agreement is reached, the tribal representative shall set out in writing both the agreement and the admitted facts that would have brought the case within the jurisdiction of the Court. The family and the ICW Program shall sign the voluntary service agreement.
- (2) The agreement may include, but shall not be limited to:
 - (A) Referrals for the child and the child's parent(s), guardian or custodian to a community agency, service provider, and/or a medical or mental health facility for needed assistance; and
 - (B) Terms of supervision that regulate the activities of the child and the child's parent(s), guardian or custodian, and are calculated to assist and benefit the family.

(c) Time Frame - A voluntary service agreement shall not exceed six (6) months in length, unless the time period is extended by recommendation of the ICW Program based upon its assessment of the family's engagement in and progress in fulfilling their obligations voluntary service agreement, and upon a determination of the Tribal Court that continuation of the voluntary placement is in the best interest of the child.

(d) Periodic Review of Agreement - The tribal representative shall review the family's progress every thirty (30) days. If, after the initial thirty (30) day period but before the end of six (6) months, the tribal representative decides that the terms of the agreement as it is being followed are not serving the best interests of the child or that the child's health or safety is in jeopardy, the representative shall file a petition alleging that the child is a child-in-need-of-care pursuant to this Code.

(e) Closing the Case - If the parties follow and fulfill the terms of the voluntary service agreement and the tribal representative does not recommend that a petition be filed, at the expiration of the agreement the tribal representative shall close the case.

(f) Lack of Agreement - If a voluntary service agreement cannot be reached and it appears that no other alternative will be in the best interests of the child and the Tribe, the ICW Program shall file a petition alleging that the child is a child-in-need-of-care.

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(g) Exclusion of Statements in Future Hearings - If a petition is filed, no statements made during the course of the informal resolution conference, whether written, oral, or demonstrative, may be used against any of the parties or witnesses. The voluntary service agreement and testimony regarding the family's compliance with the conditions and terms is admissible in such hearings.

§ 8.023. EMERGENCY CUSTODY

(a) Emergency Custody by the ICW Program

- (1) The ICW Program shall take a child into emergency custody if:
 - (A) An emergency custody order concerning the child has been issued by the Tribal Court; or,
 - (B) The ICW Program has probable cause to believe that the child is a child-in-need-of-care and that emergency removal is necessary because the child's health or safety is in immediate danger from his or her surroundings; or
 - (C) The ICW Program has probable cause to believe that a child who is subject to the Tribal Court's jurisdiction is leaving or will leave the jurisdiction of the Court without permission or without appropriate conditions in place to return the child if appropriate.
- (2) When taking a child into emergency custody, the ICW Program shall provide written notice to the child's parent(s), guardian or custodian of the reasons for the removal and the date, time and location of the preliminary inquiry hearing. The ICW Program shall hand the notice to the child's parent(s), guardian or custodian or shall post the notice at the residence of the child's parent(s), guardian, or custodian.

(b) Emergency Custody by a Tribal Law Enforcement Officer - A tribal law enforcement officer may take a child into emergency custody in accordance with Section 8.015 of this Code.

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(c) Emergency Custody Order - The Court shall issue an emergency custody order and set a preliminary hearing for a child if the Court finds probable cause to believe that the child is a child-in-need-of-care, and one or more of the following conditions exist:

- (1) The child is suffering from an illness or injury and no parent, guardian, custodian or other person is providing adequate care for the child;
- (2) The child is in immediate danger from his or her surroundings, and removal is necessary for the child's safety or well-being;
- (3) The child is likely to be subject to injury or abuse by others or by him or herself if the child is not placed in emergency custody;
- (4) The child has been abandoned by his or her parent(s), guardian, custodian or other person;
- (5) No parent, guardian, custodian or other person is able to provide adequate supervision and care for the child; or
- (6) The child is likely to run away or be taken beyond the jurisdiction of the Court and will be unavailable for further proceedings.

(d) Emergency Placement

- (1) A child who has been taken into emergency custody shall be placed, pending a preliminary inquiry hearing, with one of the following, in order of priority:
 - (A) Extended family members who will be able to protect the health and safety of the child;
 - (B) A private family home, located within the Siletz Service Area, which has been certified as a foster home by the ICW Program;
 - (C) A foster care facility, located within the Siletz Service Area, which has been licensed or approved by the ICW Program;

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- (D) A shelter care facility, located within the Siletz Service Area, which has been approved by the ICW Program;
 - (E) A foster home, located outside the Siletz Service Area, which has been approved by the ICW Program;
 - (F) A shelter care facility, located outside the Siletz Service Area, which has been approved by the ICW Program.
- (2) In all emergency placements, the placement shall expressly consent in writing to the continuing jurisdiction of the Tribal Court for all matters related to the placement and the child before the placement is made.
 - (3) A child who has been taken into emergency custody may be taken to a medical facility if the child is believed to be in need of immediate medical attention.
 - (4) No child who is alleged or determined to be a child-in-need-of-care shall be detained in a detention facility or a jail because of their status as a child- in- need- of- care.
- (e) Releasing a Child from Emergency Custody
- (1) The tribal representative, immediately upon arranging for emergency custody of the child or upon placement of the child following removal, shall review the need for such custody and shall:
 - (A) Notify the child's parent(s), guardian, or custodian within twenty-four (24) hours of learning that the child has been taken into emergency custody; and
 - (B) Release the child to his or her parent, guardian or custodian unless the ICW Program determines that the child's health or safety requires continued out-of-home care; and
 - (C) File a petition for custody of the child(ren).

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- (2) A child taken into emergency custody under this section shall be released to his or her parent(s), guardian, or custodian within five (5) days of the time that the child is taken into emergency custody, unless the Court issues an order continuing the emergency custody of the child, or unless the child's health or safety requires continued custody.
- (3) In the event of a dispute regarding a child's release from custody during the first five (5) days of custody, the tribal representative and the Programs I Manager shall have authority, in the absence of a Court order, to determine if the child shall remain in emergency custody.

§ 8.024. PRELIMINARY INQUIRY HEARING

(a) Purpose - The purpose of a preliminary inquiry hearing is to determine the best interests of a child who has been taken into emergency custody, and whether the child's health or safety is in jeopardy. In determining the child's best interests, the Court shall examine whether probable cause exists to believe the alleged act, abuse or neglect was committed and whether the continued custody is necessary to protect the child's health and safety pending further proceedings.

(b) Time Frame - A preliminary inquiry hearing shall be held as soon as possible after a child has been taken into emergency custody and in no event later than five (5) days from the time that the child is placed in emergency custody. If the child has been released from emergency custody, the preliminary inquiry shall be held within ten (10) days from the date the child is released from emergency custody. If a child has not been placed in emergency custody, the preliminary inquiry shall be held within (10) days of the filing of the petition, if the petition has not been dismissed.

(c) Attendance of Child's Parent(s), Guardian or Custodian - If the child's parent(s), guardian or custodian is not present at the preliminary inquiry hearing, the Court shall determine what efforts have been made to notify them and to obtain their presence. If it appears that further efforts are likely to produce the appearance of the child's parent(s), guardian or custodian in Court, the Court shall recess for not more than twenty-four (24) hours and shall direct the ICW Program to make continued efforts to obtain their presence. The Court may permit the child's parent(s), guardian or custodian to appear by telephone at the preliminary hearing.

(d) Findings

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- (1) If the Court determines that there is no probable cause to believe that the child is a child-in-need-of-care, the case shall be dismissed without prejudice and the child shall be released to the custody of the child's parent(s), guardian or custodian.
- (2) If the Court determines that there is probable cause to believe that the child is a child-in-need-of-care, but that the child is not in need of emergency custody, the Court shall take jurisdiction of the child but the child shall be released to the custody of his or her parent(s), guardian or custodian, under the protective supervision of the Tribe, pending final disposition of the petition.
- (3) If the Court determines that there is probable cause to believe that the child is a child-in-need-of-care and that the child is in need of continued out-of-home care, the Court shall make an order providing the ICW Program with placement and care responsibility of the child pending final disposition of the petition. The Court shall make a determination that continuation of the child in the home from which the child is removed is contrary to the welfare of the child, and that reasonable efforts to prevent the removal have been made.

§ 8.025. PETITION

(a) Investigation and Petition - The tribal ICW Program shall review and investigate all reports of suspected child abuse and neglect made pursuant to this Code, and shall file a petition with the Court upon a preliminary determination that a child is a child-in-need-of-care. The tribal ICW Program may seek the assistance of tribal law enforcement to review the reports.

- (1) The form of the petition shall be as follows:
- (2) The petition shall state:
 - (A) The specific sections of this Code which give the Court jurisdiction over the child custody proceeding;

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- (B) The provisions of this Code under which the child is alleged to be a child-in-need-of-care, or the relevant Court order which is alleged to have been violated;
- (C) The name, address, age and tribal status of the child who is the subject of the petition;
- (D) The name, address, age and tribal status of the child's parent(s), guardian or custodian;
- (E) The facts upon which any allegations relating to the petition are based, including the date, time and location where the alleged facts occurred and the names of any alleged witnesses;
- (F) The efforts made by the ICW Program to provide services to prevent or eliminate the need for removal of the child from the home; and
- (G) If the child is in emergency custody, the time and date that the child was removed from the home, the reasons for that placement, and the efforts made by the ICW Program to reunite the family; and
- (H) Whether continued removal of the child is necessary for the health, safety and welfare of the child.

(b) Assistance from Tribal Attorney - The tribal attorney may assist in the preparation of any petition or motion under this Code.

§ 8.026. ADJUDICATORY HEARING

(a) Time Frame for Adjudicatory Hearing - The Court shall hold an adjudicatory hearing on the petition within forty five (45) days after the petition is filed. Failure to comply with the time limits set out in this section, without good cause shown, shall result in the dismissal of the petition and shall prevent any future filing of a petition based on the same facts; provided, that the Court may take necessary steps in such circumstance to protect the health and safety of the child involved.

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(b) Notice - Notice of all hearings on the petition or on any matter related to the petition or the child shall be given to the parties as required by the Tribal Court Rules of Procedure

(c) Summons - Summons on the petition shall be issued and served as required by the Tribal Court Rules of Procedure, and in accordance with the following:

- (1) At least five (5) days before the adjudicatory hearing, the Court shall issue a summons to:
 - (A) The child;
 - (B) The child's parent(s), guardian or custodian;
 - (C) Any person the Court believes is necessary for the hearing; and
 - (D) Any person the parties believe is necessary for the hearing
- (2) The summons shall contain the name of the Court and the date, time and place of the hearing.
- (3) A copy of the petition shall be attached to the summons.
- (4) The summons shall be delivered personally by a tribal law enforcement officer or appointee of the Court. If the summons cannot be delivered personally, it may be delivered by certified mail, return receipt requested. If the summons cannot be delivered personally or by certified mail, any other method reasonably designed to give notice to the necessary persons shall be sufficient.

(d) Purpose of Hearing - The Court shall conduct the adjudicatory hearing for the purpose of determining if a child is a child-in-need-of-care. The Court shall hear testimony and receive evidence concerning the circumstances that gave rise to the petition.

(e) Findings - If the Court finds that the child is a child-in-need-of-care, the Court shall make written findings and shall proceed to the dispositional hearing. The Court shall make a determination as part of its findings that reasonable efforts have been made by the ICW

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Program, and others as appropriate, to prevent the necessity for removal of the child from the family.

(f) Finality of Court Order - A finding by the Court that the child is a child-in-need-of-care shall be considered to be a final order for purposes of appeal.

PART IV
DISPOSITION AND REVIEW OF CHILDREN FOUND TO BE IN NEED OF CARE

§ 8.027. POLICY

It is the policy of the Tribe that the removal of a child from his or her home for temporary emergency or foster care placement, long-term placement or termination of parental rights can only result from a judicial determination that continued custody would be contrary to the health and welfare of the child, and that reasonable efforts to prevent removal have been made and have not been successful. Where more than one child is removed from a home, it shall be the Tribe's policy to keep all of the children so removed in a single placement or shelter whenever possible. This policy shall take precedence over any conflicting placement preferences within this Code. A child shall be placed where possible in the least restrictive setting and in close proximity to the parents' home, unless the best interests, special needs, or health and safety of the child require otherwise. Extended family and relatives shall have first consideration for placement of a child provided that they are able to meet the needs of the child.

§ 8.028. PRE-DISPOSITIONAL REPORT

(a) Contents - The Court shall order the Tribal ICW Program to file a pre-dispositional report with the Court at least five (5) days before the dispositional hearing. The report shall:

- (1) Contain a specific case plan for the care of the child and the assistance to be provided to the child and/or his or her parent(s), guardian or custodian that is calculated to resolve the problems presented in the petition and address the needs of the family to prevent further abuse or neglect of the child. The case plan shall include short-term and long-term goals for reuniting the family, and shall be designed to achieve placement in the least restrictive, or most family-like, placement available. Cultural and traditional elements shall be included in the case plan wherever appropriate. The case plan shall include, at a minimum, identify the

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services necessary to reunite the family, a detailed list of the services to be provided to the child and family, which agency will provide those services, the time frame in which the services will be provided, what standard will be considered compliance with the services, and the respective responsibilities of the ICW Program, the family, and the child in making the services available and in taking advantage of the services. (The case plan shall also include all requirements of the Social Security Act of 1980, as amended, for case plans where the child is receiving foster care maintenance payments from federal or state funds. The case plan shall include: (1) a description of the placement, including a discussion about its safety and appropriateness; (2) a plan for ensuring that the child is receiving safe and proper care and describes the services that will be provided to reunite the child and family or move the child toward an alternative permanent placement; (3) the health and education records of the child; (4) a written plan to assist foster children over the age of 16 to transition from foster care to independent living; (5) documentation of efforts to find a permanent placement if the goal is not reunification; (6) a description of the steps taken and findings made if a decision is made to place the child in a relative guardianship (findings include (a) that returning the child home and adoption are not appropriate options; (b) the child has a strong attachment to the proposed guardian (and has been consulted about the guardianship if 14 years of age or older); (c) the guardian has a strong commitment to permanently caring for the child; and (d) the child was eligible for foster care maintenance payments for six consecutive months while living in the home of the guardian); (7) a plan for ensuring the educational stability of the child in foster care; and (8) discussion of the frequency and content of caseworker visits, including a minimum requirement of a visit at least once a month.;

- (2) Contain a detailed explanation showing the need for the proposed case plan and the benefits to the child and the child's parent(s), guardian or custodian under the plan;
- (3) If the representative recommends placement of the child with someone other than the child's parent(s), guardian or custodian, the report shall contain specific reasons for not recommending placement of the child with his or her parent(s), guardian or custodian.

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(b) Reports Offered by Parties - Any party may submit a separate pre-dispositional report to the Court, which shall include his or her own recommendations for consideration by the Court, at least five (5) days before the dispositional hearing.

(c) Reports to be Served - Copies of all pre-dispositional reports shall be served on the child or his or her legal representative, the child's parent(s), guardian, or custodian, and the ICW Program at least five (5) days before the dispositional hearing.

§ 8.029. DISPOSITIONAL HEARING

(a) Time - A dispositional hearing may take place immediately following the adjudicatory hearing if the parties agree and the evidence and information is available to the parties and court, or may be held not more than twenty (20) days after the adjudicatory hearing. If the dispositional hearing does not immediately follow the adjudicatory hearing, the time for the dispositional hearing shall be set at the adjudicatory hearing and that announcement shall constitute notice to all parties of the dispositional hearing.

(b) Purpose - The Court may hear testimony at the dispositional hearing for the purpose of determining the proper disposition of the child.

(c) Evidence to be Considered by the Court - The Court shall consider:

- (1) The pre-dispositional report submitted by the tribal ICW Program;
- (2) Any alternative pre-dispositional reports submitted for review; and
- (3) Any and all evidence presented by any party contesting the factual contents and conclusions of the pre-dispositional reports.

(d) Final Order - The dispositional order constitutes a final order for purposes of appeal.

§ 8.030. DISPOSITION OF CHILDREN-IN-NEED-OF-CARE

(a) Guiding Principals for Disposition

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In determining the appropriate disposition for a child-in-need-of –care, the court shall take into account the best interest of the child and the child’s health, safety, and welfare. A child shall be placed with relatives where possible, and shall be placed in the least restrictive setting in proximity to the parents or custodians, if possible, given the special needs of the child.

(b) Conditions Upon Parties - The Court has the authority to impose conditions and limitations upon a child, the child's parent(s), guardian or custodian, and any other party pursuant to this Code in order to protect the safety and best interests of a child found to be a child-in-need-of-care. Conditions and limitations may include, but are not limited to:

- (1) Counseling, therapy, and/or participation in services, including restrictions on access to reports generated as part of such counseling, therapy, or evaluations;
- (2) Restrictions on visitation and communication with one or both parents;
- (3) Payment of support or other necessary costs;
- (4) Participation in tribally-sponsored activities;
- (5) Restrictions on associations;
- (6) Restrictions on use of alcohol or drugs;
- (7) Drug testing;
- (8) Curfew restrictions;
- (9) Restitution for out-of-home care if the child is removed from the home;
and
- (10) Any other conditions or dispositions that the Court finds are appropriate to protect the best interests of the child.

(c) Written Findings Required for Removal - Where a child is removed from the home or placed in an out-of-home placement, the Court shall make written findings that

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continued custody by the parents or custodian or in the home would be contrary to the health and welfare of the child and that removal from the home is in the best interests of the child.

(d) Placement Preference - When a child found to be a child-in-need-of care requires an out of home placement, the placement preferences shall take into account the best interests of the child and the child's health, safety, and welfare, shall be followed:

- (1) Permit the child to remain with his or her parent(s), guardian or custodian under protective supervision, subject to such limitations and conditions as the Court may prescribe;
- (2) Place the child with a grandparent within the Service Area, under protective supervision, subject to such limitations and conditions as the Court may prescribe;
- (3) Place the child with an extended family member or other relative within the Service Area, under protective supervision, subject to such limitations and conditions as the Court may prescribe;
- (4) Place the child in a foster home that has been licensed or approved by the Tribe within the Service Area, under protective supervision, subject to such limitations and conditions as the Court may prescribe;
- (5) Place the child in a shelter care or residential facility within the Service Area, under protective supervision, subject to such limitations and conditions as the Court may prescribe;
- (6) Place the child in a foster home or extended family member's home that has been approved by the Tribe, outside the Service Area, subject to such limitations and conditions as the Court may prescribe;
- (7) Transfer legal custody of the child to an agency responsible for the care of children-in-need-of-care, or to an extended family member or other person who the Court finds to be qualified to receive and care for the child, subject to such limitations and conditions as the Court may prescribe;
- (8) Recommend that full or partial emancipation be ordered;

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- (9) Place the child in a long-term permanent placement, considering long-term guardianship as an alternative to the termination of parental rights based upon the individual circumstances and best interests of the child;
- (10) Recommend the initiation of proceedings for certification of a customary adoption; and/or
- (11) Recommend the initiation of proceedings for the termination of parental rights.
- (12) The ICW Program and Court shall take all available steps to ensure that the placement selected is and remains subject to the jurisdiction of the Tribal Court, including but not limited to having the placement expressly consent in writing to the continuing jurisdiction of the Tribal Court for all matters related to the child.

(e) Party Receiving Custody Shall Submit to Tribal Court Jurisdiction - Whenever the child within the jurisdiction of the court is placed in a home or facility located outside of the Siletz Service Area, the Court shall retain jurisdiction over the child and require the party receiving custody of the child to sign an agreement that:

- (1) The child will be returned to the Court upon order of the Court; and
- (2) The party receiving custody of the child consents to the jurisdiction of the Tribal Court.

Absent such a signed agreement, any person or institution accepting placement of a child pursuant to this Code shall be deemed to have consented to Tribal Court jurisdiction for purposes of determination of the child's placement, and to return the child to the Court upon request or order of the Court.

(f) Notice to Parties and Court of Changes - The parties and the Court shall be notified of any changes in the child's placement, or of any determination from a court of competent jurisdiction affecting a parent(s), guardian or custodian's legal right to custody of the child.

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(g) In all cases in which a child is placed in a non-Siletz home, the ICW Program will provide mandatory cultural training to the family and provide information and support to the family to facilitate participation in cultural events and activities with the child.

§ 8.031. REVIEW OF DISPOSITIONAL ORDER

(a) Time Frame for Court's Review - The Court shall schedule periodic review hearings to review dispositional orders at its discretion; provided, however, that within six (6) months of the original dispositional hearing and every six (6) months thereafter so long as the child remains within the jurisdiction of the Court and a permanent plan for the child has not yet been established by Court order, the Court shall conduct a hearing to review the status of the child to:

- (1) Determine the continuing need for and appropriateness both of the Court's continuing jurisdiction over the child and of the placement;
- (2) Determine the extent of compliance with the case plan;
- (3) Determine the extent of progress the child's parent(s), guardian or custodian has made toward improving the situation that initially required the child to be removed from the home;
- (4) Determine whether the ICW Program is making reasonable efforts to provide the services needed to return the child to the home, or whether reasonable efforts to reunite the family are no longer required;
- (5) Assess the ICW Program's concurrent case planning, if any, and the efforts to find a permanent home for the child if the family cannot be reunited, including but not limited to a requirement that the ICW Program identify a proposed permanent placement alternative within twelve (12) months of the Tribal Court assuming jurisdiction over the child unless the Court has determined that reunification is still a viable option and is likely to occur within a reasonable period of time, given the child's age and needs; and
- (6) Project a likely date by which the child may be returned home or when an alternative permanent plan will be put into effect.

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(b) Review Hearing Upon Written Request - The Court shall conduct a review hearing upon the written request of any party.

(c) Recommendation by Tribal ICW Program - The tribal ICW Program shall monitor the disposition throughout its term and shall recommend long-term placement options for a child-in-need-of-care within the jurisdiction of the Court. At least five (5) days before any review hearing, the tribal ICW Program shall submit a report to the Court discussing:

- (1) The family's compliance with the case plan;
- (2) The long term prospects of reuniting the child with his or her family within a reasonable period of time, from the child's perspective; and
- (3) The ICW Program's effort to find a permanent home for the child, and to develop a permanency plan for the child either as a concurrent plan or, within twelve months of jurisdiction or within thirty (30) days after the Court determines that reunifications efforts for the family are no longer appropriate.

(d) Notice and Opportunity to be Heard - Foster parents, relative caregivers, and pre-adoptive parents providing care to a child found to be a child-in-need-of-care pursuant to this Code shall be provided notice of and the opportunity to be heard in any review hearing concerning the child. The foster parents, relative caregivers, and pre-adoptive parents are not legal parties to the proceedings.

(e) Modification of Dispositional Order - The Court may modify a dispositional order at any time upon a showing of good cause. Any of the following persons may initiate the motion to modify a dispositional order:

- (1) The child or the child's legal representative;
- (2) The child's parent, guardian or custodian;
- (3) The tribal representative; or
- (4) The Court.

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(f) If Reasonable Efforts are no Longer Required - If the Court determines that reasonable efforts to reunite the family are no longer required, a permanency planning hearing shall be held within thirty (30) days and the ICW Program shall make reasonable efforts to place the child in a permanent placement according to the placement preferences set in § 8.030 (d) in a timely manner.

§ 8.032. PERMANENCY PLANNING HEARING

(a) When Permanency Planning Hearing Required - The Court shall hold a permanency planning hearing to determine the permanent plan for the child. The permanency planning hearing may be combined with the periodic review hearing. The permanency planning hearing shall be held within twelve (12) months from the date that a child enters foster care, or within thirty (30) days after the Court finds that reasonable efforts to reunite the family are no longer required. A child shall be considered to have entered foster care on the earlier of the following two (2) dates:

- (1) The date of the adjudicatory hearing finding that the child is a child-in-need-of-care; or
- (2) The date that is sixty (60) days after the date the child was removed from the home.

(b) Notice and Opportunity to be Heard - Foster parents, relative caregivers, and pre-adoptive parents providing care to a child found to be a child-in-need-of-care pursuant to this Code shall be provided notice of and the opportunity to be heard in a permanency planning hearing concerning the child. The foster parents, relative caregivers, and pre-adoptive parents are not legal parties to the proceedings.

(c) Permanency Planning Reports

- (1) The ICW Program shall submit a report to the Court no later than five (5) days before the permanency planning hearing. The report shall:
 - (A) Summarize the history of the case and the efforts made to offer services to the child and the family;
 - (B) Describe the child's and the family's circumstances, including the case management and services provided by the ICW Program since

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the last Court hearing;

- (C) Describe the extent of compliance by all parties with the case plan;
 - (D) Describe the parent(s), guardian, or custodian's treatment progress and efforts toward reunification.
 - (E) Recommend a permanent plan for the child indicating whether, and if applicable when, the child will be returned to the child's parent(s), guardian or custodian or placed with a permanent placement. The report shall include specific reasons why the recommended permanent plan has been chosen, including why that plan meets the child's particular needs and best interests, and why other permanent plans have not been chosen;
 - (F) Describe the efforts made to develop a concurrent plan for the permanent placement of the child to be put into place if the family cannot be reunited, and the steps taken to find a permanent placement for the child, if necessary; and
 - (G) Explain the compelling reasons why termination of parental rights is not being recommended as the permanent plan for the child, including the specific reasons why the best interests of the child in question will not be served by termination of parental rights and what advantages and benefits will inure to the child by virtue of the child's parental rights not being terminated..
- (2) Any party may submit a separate report to the Court, which shall include his or her own recommendations for consideration by the Court, at least five (5) days before the dispositional hearing.
 - (3) Copies of all reports shall be served on the ICW Program, the child or his or her legal representative, and the child's parent(s), guardian, or custodian at least five (5) days before the permanency planning hearing.
- (d) Return of the Child - The Court shall return the child to the physical custody of the child's parent(s), guardian or custodian unless the Court finds, by a preponderance of evidence, that returning the child would cause a substantial risk to the physical or

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emotional well-being of the child. The burden is on the tribal representative to prove that the child's health or safety will be at risk if returned to his or her parent(s), guardian or custodian.

- (e) Written Findings and Permanent Plan - The Court shall enter written findings, including:
- (1) Whether the tribal ICW Program has made reasonable efforts to reunite the family, or whether reasonable efforts to reunite the family are no longer necessary or productive;
 - (2) The permanent plan for the child, if the Court determines not to return the child to the child's parent(s), guardian or custodian. The permanent plan may include:
 - (A) Continuing reunification as the permanent goal for the family and maintaining the child in the current placement if the child's parent(s), guardian or custodian is making progress toward reunification and reunification is likely within a reasonable time based upon the child's needs;
 - (B) Placing the child with long-term guardian, who shall be appointed by the Court;
 - (C) Maintaining the child in foster care on a permanent or long-term basis, if the foster care is provided by a relative or compelling reasons for placement exist;
 - (E) Filing a petition to certify the customary adoption of the child; or
 - (F) The tribal ICW Program file a petition to terminate parental rights and secure an adoptive placement for the child.
 - (3) Why the permanent plan chosen is in the best interests of the child, and why other permanent plans were not selected;
 - (4) The Tribal ICW Program's efforts to develop a concurrent plan for the child in the event that the return of the child is not possible, or if a

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concurrent plan has not been developed, the reasons why a concurrent plan is not necessary; and

- (5) If the permanent plan does not involve the filing of a petition to terminate parental rights, the compelling reasons why termination of parental rights would not be in the best interests of the child and why the alternative selected is in the best interests of the child.

(f) Permanent Plan Review Hearings

- (1) Where a child remains under the jurisdiction of the Court and in the custody of a foster parent, temporary guardian or other non-permanent placement, the Court shall review the permanent plan for the child every six (6) months to determine:

- (A) The appropriateness of the placement;
- (B) The appropriateness of and the extent of compliance with the permanent plan for the child;
- (C) The adequacy of services provided to the child and the child's parent(s), guardian or custodian to reunite the family within a reasonable period of time and to find a permanent home for the child in the event that reunification is not possible; and
- (D) Whether additional services are necessary to support the permanent plan.

- (2) Subsequent permanent plan review hearings need not be held if:

- (A) The child has been adopted;
- (B) The child is a ward of a permanent guardian , or,
- (C) The child has been placed permanently with a relative.

- (g) Continuing Jurisdiction of Court - For dispositional purposes, jurisdiction over a child under this Code shall continue until he or she reaches eighteen (18) years of age,

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unless jurisdiction is terminated earlier by order of the Court or extended beyond the child's eighteenth (18) birthday by order of the Court.

PART V
OUT-OF-HOME PLACEMENT ALTERNATIVES

§ 8.033. VOLUNTARY PLACEMENTS

(a) Request for Voluntary Placement - A child's parent(s), guardian or custodian may request services from the tribal ICW Program that include the placement of the child in out-of-home care for up to one hundred eighty (180) days, in the absence of other resources or for special needs such as a short-term imprisonment or in-patient treatment, by filing a consent for voluntary placement form with the Court.

(b) Temporary Case Plan - The child's parent(s), guardian or custodian shall establish a temporary case plan, in writing and signed by the tribal ICW Program and the child's parent(s), guardian or custodian, which shall include:

- (1) The need for the placement and the expected length of the placement, and the services to be provided and the progress to be made by the parent(s), custodian or guardian during the placement;
- (2) A post-placement plan for the care of the child;
- (3) The parent(s), guardian or custodian's consent to the emergency medical care and transportation of the child by the ICW Program and/or the temporary placement of the child by the Program;
- (4) A plan for the support of the child during the out-of-home placement;
- (5) The legal status of the child and the rights and obligations of the child's parent(s), guardian or custodian and ICW Program while the child is in placement; and
- (6) An explanation to the parents that if they do not resume custody at the end of the voluntary period established under the terms of the agreement that the ICW Program may file a petition pursuant to the provisions of the juvenile code.

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(c) Extension of Placement - A temporary out-of-home placement may be extended by order of the Court after 180 days, if they are participating with the agreement and the Court issues an order finding that continuation of the agreement and continued placement is in the best interests of the child.

(d) Return of Child - If the child's parent(s), guardian or custodian requests that the child be returned to their home or to the home of a relative, the ICW Program shall return the child unless the Tribal ICW Program opposes the request, files a petition pursuant to the provisions of this Code and obtains an order from the Court finding that the return of the child would not be in the best interests of the child, or would be contrary to the child's health or safety.

§ 8.034. FOSTER CARE

(a) Duties of Foster Parent - Foster care is designed to enhance the overall health and welfare of Indian children. A foster parent shall:

- (1) Provide a safe, healthy and caring environment for foster children;
- (2) Serve as a role model to children for cultural and spiritual growth and encourage children to be motivated to learn and respect themselves, their family, their Tribe and Elders;
- (3) Promote consistent and fair discipline through guidance and a structured environment;
- (4) Assist children by listening to their needs, concerns and fears; and
- (5) Participate in foster care training and activities including tribal activities in the hope of restoring the overall health of Siletz children and families.

(b) Relative Care

- (1) A child may be placed in the foster care of a relative after the ICW Program completes the following steps:
 - (A) Verification of the family relationship;

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(B) A criminal background check of the prospective foster parent and a check into the prospective foster parent's driving record and vehicle insurance status; and

(C) A home visit to assess the safety of the home and the placement.

(2) To receive foster care payments under Title IV-E of the Social Security Act, a relative providing foster care for a child must meet the licensing standards established by the Tribe and be tribally approved as a foster home for the child.

(c) Non-Relative Foster Care Placements - Foster care licensing standards shall be used to determine the appropriateness of non-relative foster care placements. Any person seeking to provide foster care for children who are not family members shall be formally licensed and certified in accordance with this Code and the Tribe's foster care licensing procedures.

(d) Foster Parent Agreement - Before a child is placed in foster care, a foster parent agreement shall be established in writing and shall be signed by the foster parent(s) and the tribal ICW Program. The foster care agreement shall state the roles and responsibilities of the foster parent(s) and the tribal ICW Program, consent to tribal jurisdiction for all matters arising from the foster parents relationship and regarding the child, and shall outline any payments that will be made for the support and care of the child.

(e) Training and Counseling - Whenever possible, the Tribal ICW Program shall provide the foster parent(s) with training and counseling referrals to assist the foster parent(s) with the care of the child.

(f) Approving Tribal Foster Homes

(1) Any person wishing to serve as a tribal foster parent shall apply in writing to the ICW Program. Each applicant shall furnish the ICW Program with a written application, which shall include the reasons the applicant wishes to become a foster parent, and at least four (4) personal references.

(2) The ICW Program shall perform a criminal background check on all persons residing in the applicant's home and check of the applicant's driving record and insurance, and shall conduct a home study. The home

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study shall include a personal interview with the applicant and the applicant's family, and an inspection of the applicant's home. The ICW Program shall complete a written report of his or her findings and recommendations concerning the applicant's suitability as a foster parent. The report shall describe:

- (A) The number of persons who reside in the applicant's home, including the age, sex and relationship of each person to the applicant;
 - (B) The number of beds in the applicant's home, and their location and suitability for a foster child;
 - (C) The availability of space for a foster child to sleep, study and store clothing and personal effects, as appropriate to the child's age and needs;
 - (D) The availability of adequate indoor and outdoor areas where a child can play safely;
 - (E) Whether potentially dangerous items such as guns, drugs or poisons are stored in the applicant's home and if so, whether adequate safeguards exist to prevent a child from coming into contact with the items; and
 - (F) Whether special arrangements are necessary to contact the applicant in the event of an emergency.
- (3) In addition to the information provided under subsection (2), the ICW Program may, with the applicant's consent, request:
- (A) Information concerning the suitability of the applicant as a foster parent from other sources, including neighbors, employers or agencies who have had contact with the applicant and the applicant's family;
 - (B) Information concerning the applicant's physical and mental health; and

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- (C) Inspections by authorized fire and safety and public health officials to ensure that the home is adequately protected from hazards.
- (4) To be approved as a foster parent, each applicant shall:
 - (A) Have child-rearing practices and attitudes that will serve the best interests of a foster child;
 - (B) Provide a stable, harmonious home and a healthy environment for rearing children;
 - (C) Be a responsible person and a positive adult role model who exercises sound judgment and displays the ability to provide good care for children;
 - (D) Respect the cultural values of the Tribe and the religious preferences of foster children;
 - (E) Have sufficient income to meet the needs of his or her family without any supplementary payment for a foster child's care and apply any foster care payments towards the foster child's care;
 - (F) Comply with the directions of the Court concerning the care of a foster child and maintain the confidentiality of information about the child and child's family;
 - (G) Provide adequate supervision by a responsible adult at all times when the foster child is in the home;
 - (H) Provide the foster child with a well-balanced and nutritious diet. If unpasteurized milk is used in the foster home, the foster parent shall furnish the Court with a signed statement from a licensed veterinarian verifying that TB and brucellosis tests within the previous year were negative;
 - (I) Not require a foster child to do work that presents a health or safety hazard to the child or that interferes with the child's education;

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- (J) Not administer corporal punishment to the child; and
 - (K) Not have been convicted of child abuse or neglect, spousal abuse, a crime against children (including child pornography), a crime involving violence, including rape, sexual assault or homicide but not including other physical assault or battery at any time, or a felony conviction for physical assault, battery or a drug-related offense in the last five years.
- (5) Within ninety (90) days of receiving a complete application from a prospective foster parent, the ICW Program must complete its review of the application and issue a foster care certificate to each applicant who meets the standards set forth by the Tribe and who agrees to accept foster children referred by the ICW Program.
- (A) Each foster care certificate shall specify the maximum number of children that the foster home can care for at any one time.
 - (B) Subject to renewal upon an updated review by the ICW Program, each foster care certificate shall expire two (2) year after the date the certificate is issued, unless revoked by the ICW Program or cancelled by the Court.
 - (C) The ICW Program may issue a provisional certificate to any applicant who cannot satisfy the standards in these rules if the Program finds that the deficiencies will not affect a foster child's physical health, safety or emotional well-being and that the applicant can take corrective steps within a reasonable period of time. A provisional certificate shall expire within ninety (90) days, unless cancelled by the ICW Program.
- (6) Any foster care certificate shall be cancelled automatically if the foster parent moves or otherwise changes residence, until such time as the ICW Program has evaluated the new home and issued an updated certificate.
- (7) Any foster care certificate if a material change that would disqualify the parent from being certified occurs in the foster parent's family or home.

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Examples of material changes that might justify cancelation of a certificate include a change in the parent's marital or employment status, a change in the condition of the foster home, or the foster parent's repeated refusal to accept foster children referred by the ICW Program.

(g) Title IV-E Exception Committee - [Reserved]

(h) Appeal of Denial or Revocation of Foster Home Certification.

Applicants for foster home certification whose applications have been denied and foster care providers whose certification has been revoked have the right to appeal the ICW Program's decision pursuant to the provisions of the Administrative Appeals Ordinance, 2.700 et seq.

§ 8.035. PERMANENT GUARDIANSHIPS

(a) Policy - It shall be the policy of the Siletz Tribe to prefer permanent guardianships as a long-term placement option for tribal children over adoption or long-term foster care, in order to maintain the children's contacts with family, relatives, tribal community and culture as appropriate. It shall further be the policy of the Tribe to prefer guardianships that maintain and preserve the child's connection to the child's family and the Tribe. The permanent guardianship provided for under this Chapter is different than a non-dependency guardianship as provided for by law. The permanent guardianship may only be established for a child(ren) already within the jurisdiction of the Court pursuant to the provisions of the Siletz Juvenile Code.

(b) Authority to Appoint - The Court has the power to appoint a guardian, as the permanent plan for child found to be a child-in-need-of-care or when a petition for guardianship is filed pursuant to this section.

(c) Initiation of Guardianship Proceeding - A guardianship proceeding may be initiated by:

- (1) A petition by the ICW Program; or
- (2) A petition by a child if the child is fourteen (14) years of age or older; or
- (3) A motion by the Court.

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- (d) Contents of Petition - A petition for guardianship shall include:
- (1) The name, address, age and tribal status of the child;
 - (2) The name, address, age and tribal status of the prospective guardian, and the ability of the prospective guardian to carry out the duties of a guardian;
 - (3) The name, address, age and tribal status of the child's parent(s);
 - (4) A statement of the specific facts that form the basis for the request for permanent guardianship;
 - (5) The date on which the child came under the jurisdiction of the Court; and
 - (6) A description of any previous Court hearings concerning the child and the child's current legal and placement status.

(e) Notice to Parties - The Court shall give at least ten (10) days notice of the date, time, place and purpose of the guardianship hearing to the person currently having custody and care of the child if not the petitioner, to the child's parent(s) if parental rights have not been terminated, to the ICW Program, to the petitioner, to the child or the child's legal representative, and to other persons as the Court deems appropriate.

(f) Report - The ICW Program shall prepare and present a written report to the Court at least three (3) days before the guardianship hearing. The report shall contain:

- (1) Information concerning the qualifications of the proposed guardian to carry out the duties of a guardian, including but not limited to the results of the criminal background check conducted on the proposed guardian by the ICW Program; and
- (2) The ICW Program's recommendation concerning whether the proposed guardianship would serve the best interests of the child.

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(g) Standard - In appointing a guardian, the Court shall be guided by the best interests of the child. If the child is fourteen (14) years of age or older, the Court shall consider the child's preference in appointing a guardian.

(h) Review of Guardianship

(1) Guardians appointed pursuant to this section must file an annual report with the Court detailing the child's conditions and circumstances. The ICW Program must also file an annual report with the Court on guardianships created under this Section.

(2) The ICW Program, the child, or the child's guardian, may petition the Court at any time to review the permanent guardianship established under this section. Only the ICW Program shall have the authority to petition the Court to terminate a permanent guardianship established under this Section and to return the child to the child's parents. The Court shall have the power to remove a child's guardian and appoint a replacement guardian whenever necessary to protect the best interests of the child, as established by clear and convincing evidence.

(i) Guardianship as Part of a Permanent Plan - If a guardianship is ordered as part of a permanent plan for a child, the Court may relieve the ICW Program from ongoing case management responsibilities except as provided in Section 8.030 (h)(1). A permanent guardianship for a child is presumed to continue until the child is eighteen (18) years of age unless otherwise ordered or found by the Court by clear and convincing evidence.

§ 8.036. RESIDENTIAL FACILITIES

(a) Placement of Children in Residential Facilities - No child shall be placed in a residential facility until an assessment of the total needs of the child has been completed and the Court determines that the residential facility will serve the best interests of the child, and not jeopardize the health or safety of the child.

(b) Contact and Reporting - The ICW Program shall maintain regular contact with a child placed in a residential facility and the institution through letters or visits, and shall make a semi-annual evaluation of all aspects of the child's care and progress. Home visits and family contact shall be encouraged where appropriate.

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§ 8.037. CUSTOMARY ADOPTION

(a) Purpose - The Tribe recognizes that non-biological parents may assume parental responsibilities for children by tribal custom without the need to terminate parental rights of the parents of a child. If the arrangement is permanent according to tribal custom, it may be certified by the Tribal Court as a customary adoption. This section sets forth the legal process for the legal certification of a customary adoption and the modification of parental rights, in order to assign some parenting responsibilities to a suitable non-biological parent(s) by law.

(b) Initiation of Certification of Customary Adoption by Petition - The ICW Program or the customary adoptive parent may file a petition for certification of a customary adoption. The petition shall include:

- (1) The name, address, age and tribal status of the child who is the subject of the petition;
- (2) The names, addresses and tribal status, if known, of the child's parent(s), guardian or custodian;
- (3) The name, address and tribal status of the child's proposed customary adoptive parent(s);
- (4) A brief and concise statement of the facts and circumstances supporting the request for certification of the customary adoption including why it is preferable to termination of parental rights and adoption; and
- (5) A plan for the modification of parental rights, which shall include:
 - (A) A description of which parental rights should be assigned to the customary adoptive parent and the reasons for the proposed assignment of those rights, and which parental rights of the existing parent or parents will be modified;
 - (B) A plan for visitation or other contact with the child's biological parents and/or extended family, if any; and
 - (C) The monitoring to be provided to the family by the ICW Program, if any.

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(c) Reports and Documents in Support of Certification of a Customary Adoption

- (1) At least ten (10) days before the certification of a customary adoption hearing, the ICW Program shall submit a written report to the Court. The report shall contain:
 - (A) The results of a criminal background check and home study of the customary adoptive parent(s);
 - (B) The findings, opinions and recommendations, if any, of all professionals consulted regarding the proposed certification of customary adoption, including the opinion of a tribal elder or other qualified tribal person that the proposed permanent placement is in accord with tribal custom or tradition;
 - (C) A social history of biological parent(s) and the child, and a history of any child custody proceedings involving the child's family;
 - (D) The recommendation of the ICW Program and concurrence of the Child Protection Team regarding whether certification of the customary adoption is in the best interests of the child; and
 - (E) The recommendation of the ICW Program and concurrence of the Child Protection Team regarding which parental rights should be assigned to the customary adoptive parent, what parental rights should be modified, and what level of visitation or other contact with the child's biological family is appropriate and in the best interests of the child.

The ICW Program shall serve a copy of the report upon the biological parent(s) of the child, the customary adoptive parent(s), and the child or the child's legal representative at least ten (10) days before the hearing unless they have contested to and waived further participation in the proceeding before the certification of customary adoption hearing.

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- (2) Any other person may submit a separate report to the Court, which shall include his or her own recommendations for consideration by the Court, at least ten (10) days before the certification of customary adoption hearing.
 - (3) At least ten (10) days before the certification of a customary adoption hearing, the petitioner shall provide the Court with written consent to the customary adoption and modification of parental rights, signed and acknowledged before a Notary Public or the Court, from the following persons:
 - (A) The child's biological parent(s);
 - (B) The child's legal guardian or custodian, if he or she is empowered to consent; and
 - (C) The child, if the child is fourteen (14) years of age or older.
 - (4) The Court may dispense with the consent of the biological parents in appropriate cases, including but not limited to where the parents cannot be found or the parent(s)' withholding of consent is not in the best interests of the child.
- (d) Grounds for Certification of Customary Adoption
- (1) In determining whether to certify the customary adoption, the Court shall consider all reports submitted for review and the testimony of all parties.
 - (2) The Court may accept the consent of the child's biological parent(s) if:
 - (A) The parent orally explains his or her understanding of the terms of the customary adoption and modification of parental rights to the Court, and the Court certifies that the terms and consequences of the consent were fully understood by the parent; and
 - (B) The consent was given no sooner than ten (10) days following the birth of the child.

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- (3) Consent of a biological parent of the child to the certification of the customary adoption is not required as set out above, or if the Court finds that the parent has:
 - (A) Abandoned the child;
 - (B) Physically or sexually abused the child; or
 - (C) Exposed the child to chronic neglect or emotional mistreatment.
- (4) The Court may approve the certification of the customary adoption if the Court finds that the customary adoption and the modification of parental rights is in the best interests of the child and the Tribe.

(e) Rights of Customarily Adopted Child - A certification of customary adoption creates a relationship between the adopted child and the customary adoptive parents that would have existed if the child were the biological child of the customary adoptive parents, unless the Court orders otherwise. A customarily adopted child shall be entitled to the same rights as a biological child of adoptive parent(s), except that adoption does not confer tribal membership status on an adopted child who is not otherwise eligible for membership. Adoption does not terminate the rights of biological extended family members of the child, unless the Court orders otherwise. A customary adoption does not sever a child's right to any inheritance from a birth relative. A customary adoption does sever the child's biological parents and relatives right to inherit from the child.

(f) Certification of Customary Adoption

- (1) If the Court certifies the customary adoption, the Court shall enter written findings and issue a certification of customary adoption. The certification of customary adoption shall include:
 - (A) A statement that the customary adoption of the child is certified by the Court and that the customary adoption is a legally recognized adoption;
 - (B) An order of the Court modifying the rights of the child's biological parent(s) and setting forth terms of visitation where appropriate;

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- (C) A statement that the child is, for all intents and purposes, the child, legal heir, and lawful issue of the customary adoptive parent(s);
 - (D) The full name of the child following the customary adoption; and
 - (E) A statement that the customary adoption will remain temporary for one (1) year from the date of entry of the certification, and shall become permanent at the expiration of the one (1) year period.
- (2) Within five (5) days after the customary adoption becomes permanent, the Clerk of the Court shall notify the Division of Vital Statistics of the State Board of Health of the state that issued the child's original birth certificate that the adoption has taken place. The Clerk of the Court shall provide the Division of Vital Statistics with a certified copy of the certification and the full name, sex, birthday and names of the child's biological parents, so that a new record of birth, including the name(s) of the adoptive parent(s) and the new name of the child, if any, can be recorded.

(g) Confidentiality of Records - The confidentiality provisions applicable to adoption records, set forth in section 8.033(s) of this Code, shall apply to all records relating to proceedings involving the certification of a customary adoption.

§ 8.038. TERMINATION OF PARENTAL RIGHTS

- (a) Purpose - The purpose of this section is to:
 - (1) Provide a process for the Court to order the termination of parental rights in voluntary and non-voluntary situations;
 - (2) Provide meaningful and clear standards to be applied to termination of parental rights proceedings; and
 - (3) Ensure competent, stable, and on-going care of children through prompt and final adjudications.
- (b) Policy - Non-voluntary termination of parental rights to a child is a serious matter.

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- (1) The Court shall order the termination of parental rights only after all attempts to maintain the safety and stability of the family and child or to maintain a minimum level of positive contact between the child and the child's family, including extended family, have been exhausted and where the termination of parental rights would be in the child's best interests.

- (2) Effect on Child's Other Rights - The termination of parental rights to a child shall have no effect on:
 - (a) The child's enrollment status as a member of the Tribe;
 - (b) The child's degree of blood quantum;
 - (c) The child's rights of inheritance from his or her biological parents; or
 - (d) The child's relationship with his or her extended family members, where appropriate.

- (3) The parental rights to one parent may be terminated without affecting the rights of the other parent's parental rights.
 - (c) Initiation of Termination of Parental Rights Proceedings - A termination of parental rights proceeding shall be initiated when the tribal ICW Program files a petition seeking the non-voluntary termination of parental rights, or the parent of a child files a petition seeking to voluntarily terminate their parental rights to the child. The petition shall include:
 - (1) The name, address, age and tribal status of the child who is the subject of the petition;
 - (2) The names, addresses, age and tribal status, if known, of the child's parent(s), guardian or custodian;
 - (3) A citation to the specific section of this Code that gives the Court jurisdiction over the termination of parental rights proceedings;
 - (4) A brief and concise statement of the facts and circumstances supporting the request for the termination of parental rights; and

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- (5) A plan for the care, custody, and control of the child if parental rights are terminated.

(d) When Petition to Non-Voluntarily Terminate Parental Rights Shall be Filed - The tribal ICW Program shall file a petition to non-voluntarily terminate a parent's rights to a child when:

- (1) The conduct or condition of the parent renders the parent unable to care for the child, and the conduct or condition is unlikely to change within one (1) year;
- (2) The parent is unfit and continued contact between the parent and the child on any basis is not in the child's best interests; or
- (3) In the following circumstances:
 - (A) The parent has abandoned the child and made no effort to contact the child for more than a two (2) year time period;
 - (B) The child's parent has committed a felony assault that resulted in serious bodily injury to the child or another child of the parent, or the parent has committed or aided, abetted, attempted, conspired or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; or
 - (C) The child has been in foster care for fifteen (15) of the most recent twenty-two (22) months, unless:
 - (i) The child is being cared for by a relative;
 - (ii) The ICW Program has documented in the case plan a compelling reason for determining that filing a petition to terminate parental rights would not be in the best interests of the child; or
 - (iii) The ICW Program has not provided services to the child's family that are necessary to reunite the family.

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(e) Notice of Termination of Parental Rights Hearing

- (1) A hearing on a petition to terminate parental rights shall be held within forty five (45) days after a petition to terminate parental rights has been filed.
- (2) The Court shall give notice of the hearing on the petition to terminate parental rights to the following persons at least ten (10) days before the hearing:
 - (A) The child if the child is fourteen (14) years old or older;
 - (B) The child's parent(s), guardian or custodian, if any; and
 - (C) Any other persons who the Court deems appropriate.
- (3) The Court shall issue a summons, which shall include a copy of the petition to terminate parental rights, and shall deliver a copy of the summons to all of persons listed in subsection (2).

(f) Subpoenaing Witnesses

- (1) The Court may, in its discretion, subpoena experts who have knowledge of the parent-child relationship that is the subject of the hearing, including physicians, psychiatrists, mental health professionals, social workers, and any other person from the community who has knowledge of the family or the traditional child-rearing methods and attitudes of the Tribe.
- (2) The Court may subpoena the presence of any other witnesses or persons who the Court determines have a direct interest in the case.
- (3) If proposed witnesses are not subject to tribal subpoena, the Court may request that the witnesses appear and testify, or may seek aid from the nearest court with jurisdiction over the witnesses in obtaining a subpoena.

(g) Court-Appointed Legal Representative for the Child - In any proceeding for non-voluntary termination of parental rights, or any rehearing or appeal involving the non-voluntary termination of parental rights, the Court may appoint a legal representative to represent the child

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if the Court determines that the interests of the child will not be represented by any of the parties to the proceeding.

(h) Reports Pertaining to the Termination of Parental Rights

- (1) At least ten (10) days before any hearing on a petition to terminate parental rights, the tribal ICW Program in consultation with the Child Protection Team, shall prepare and present a written report to the Court. The report shall contain:
 - (A) The findings, opinions and recommendations, if any, of all professionals consulted regarding the termination of parental rights and who will be available to testify at hearings regarding termination of parental rights;
 - (B) The social history of the parent and the child, and the history of child custody proceedings involving the family;
 - (C) The proposed adoptive or other permanent placement for the child; and
 - (D) Any and all other facts that are necessary and related to the proposed termination of parental rights.

The report shall be served upon the parent whose parental rights may be terminated and the child's legal representative, if any, at least twenty (20) days before the termination of parental rights hearing.

- (2) A parent who is the subject of a termination of parental rights hearing may submit a report to the Court at least ten (10) days before the hearing on the petition to terminate parental rights. The Court shall provide the ICW Program and the child's legal representative, if any, with a copy of any reports filed with the Court pursuant to this subsection.
- (3) The Court may, in its discretion, order other persons or agencies to submit written reports to the Court concerning the proposed termination of parental rights. The Court shall provide the parent who is the subject of the hearing, the tribal ICW Program and the child's legal representative, if

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any, with a copy of any additional reports filed with the Court pursuant to this subsection. The Court also has the discretion to condition the release of these reports to the parties by releasing the reports only the legal representatives of the parents and child with the directive that the legal representative may review and discuss the contents of the report with their respective client but they are not allowed to give copies of the report to the client. The Court may also require the party providing the reports to redact information from the report including but not limited to: the identity of confidential reporters, a person's social security number, or a victim's contact information.

(j) Termination of Parental Rights Hearing - The Court shall conduct a hearing to determine whether the parent's rights to the child should be terminated. In considering the proposed termination of parental rights, the Court shall give primary consideration to the child's health, safety and best interests.

(1) A finding that parental rights should be terminated shall be supported by evidence beyond a reasonable doubt that:

(A) The parent abandoned the child or is otherwise unable to care for the child within a reasonable period of time from the child's perspective, after the offer of services designed to remedy the conditions or circumstances that make the parent unable to care for the child;

(B) The parent willfully and repeatedly caused physical or emotional injuries to the child, which caused or created a substantial risk of death, disfigurement or impairment of bodily functions;

(C) The parent willfully and repeatedly committed acts of sexual abuse on the child, or permitted another person to commit the same; or

(D) The parent has voluntarily agreed to terminate his or her parental rights.

(2) In making a determination pursuant to subsection 8.038(j)(1) the Court shall consider, but is not limited to considering whether:

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- (A) The parent has an emotional illness, mental illness, or mental deficiency that makes the parent unable to care for the ongoing physical, mental and emotional needs of the child;
- (B) The parent has abused or neglected the child and the severity of the abuse or neglect;
- (C) The parent has repeatedly consumed excessive amounts of intoxicating liquors, illegal substances or drugs affecting the ability of the parent to provide a safe home and appropriate care for the child;
- (D) The parent will be imprisoned for more than one (1) or more years;
- (E) The parent has been convicted of intentionally, recklessly, willfully or wantonly caused the death of or injury to the child's sibling;
- (F) The parent has failed to maintain regular visitation or other contact with the child as set forth in a plan to reunite the child with the parent, and has failed to attempt to remedy any problems that may have prevented the parent from doing so;
- (G) The parent has failed to visit or contact the child on a regular basis over a period of two (2) or more years, and that failure is not the result of interference or intimidation by any other person;
- (H) Attempts by the ICW Program and other social service agencies to aid the parent in treatment or rehabilitation efforts have been unsuccessful, and the parent has not made any substantial progress toward recovery or rehabilitation on his or her own; or
- (I) The child was left alone, the identity of the parent is unknown and cannot be discovered after careful searching, and the parent has not come forward to claim the child within six (6) months after the date on which the child was found.

(k) Voluntary Termination of Parental Rights

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- (1) The Court may terminate the parental rights of any parent who desires to voluntarily give up his or her parental rights to a child. The Court shall require that:
 - (A) No voluntary termination of parental rights shall be accepted by the Court before ten (10) days after the birth of the child to whom the parent seeks to give up his or her parental rights;
 - (B) No voluntary termination shall occur until a written report has been submitted to the Court by the Tribal ICW Program indicating that social services and counseling have been offered to the parent, that the consequences of the parent's actions have been fully explained to the parent, that the parent understands the consequences of their actions, what is the planned placement for the child and that it complies with Siletz law, and that the termination of parental rights is in the best interests of the child; and
 - (C) If a parent chooses to waive his or her right to appear at the termination of parental rights hearing, the waiver shall be in writing, signed before the Court, and knowing and voluntary.

- (2) If the Court has reasonable doubt concerning the emotional state of mind of the parent seeking to give up his or her parental rights, or of the parent's ability to fully understand the consequences of his or her decision, the Court shall place the child in the legal custody of the ICW Program for a period not to exceed thirty (30) days, in order to allow the parent to consider his or her decision. The Court may order legal and psychological counseling for the parent in order to assure that the parent understands the consequences of his or her decision. A report indicating that counseling has been offered and the results of such counseling shall be made to the Court. Immediately after the end of the thirty (30) days period, the Court shall conduct a hearing and shall:
 - (A) Return custody of the child to the parent;
 - (B) Process the petition for voluntary termination of parental rights; or

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- (C) Extend the period for no more than thirty (30) additional days to allow further counseling. At the expiration of the thirty (30) days, the Court shall resume the hearing and proceed pursuant to this Code.

(1) Order Terminating Parental Rights

- (1) If the Court orders the termination of a parent's rights to a child, the Court shall issue written order explaining the reasons for the decision. The Court may terminate all parental rights to a child, or may modify only the parent's legal and physical custodial rights so that the parent may continue to have contact with the child.
- (2) The Court shall make an order for the permanent custody of the child, including that:
 - (A) The child be placed with an extended family member;
 - (B) The child be placed with a permanent guardian or a customary adoptive parent; or
 - (C) The child be placed in a foster care or shelter care facility that has been approved by the Tribe, on a temporary basis, while a permanent placement is sought; and/or,
 - (D) The case proceed pursuant to the adoption provisions of this Code.
- (3) An order terminating parental rights is a final order for purposes of appeal.

§ 8.039. ADOPTION

(a) Policy - It is the policy of the Siletz Tribe that its children should be adopted, aside from customary adoption, only as a matter of last resort, and that an alternative long-term placement that maintains the connection between the child, the child's parent(s), the child's family, and the Tribe, such as a guardianship or customary adoption, shall be considered first. A decree of adoption shall not terminate the legal relationship between the child and the child's biological extended family members, except by order of the Court.

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- (b) Who May Be Adopted - A child who is subject to the jurisdiction of the Tribal Court.
- (c) Who May File a Petition to Adopt a Child
- (1) Any adult may file a petition to adopt a child.
 - (2) Married persons or domestic partners who maintain a home together shall both petition for adoption. If one of the spouses is the biological parent of the child to be adopted, the biological parent shall not be a party to the petition.
 - (3) A person who is legally separated from his or her spouse may petition to adopt a child without the consent of his or her spouse.
- (d) Preference in Adoption - Preference for the adoption of a child shall be given in the following order:
- (1) Any member of the child's extended family who is a member of or eligible for membership in the Siletz Tribe, or any couple, one of whom meets the requirements of this subsection;
 - (2) Any member of the child's extended family;
 - (3) Any member of the child's extended family who is a member of or eligible for membership in any other Indian tribe or cultural group, or any couple, one of whom meets the requirements of this subsection;
 - (4) If this order of preference cannot be met, placement may be permitted, with tribal approval and for good cause shown, with:
 - (A) Any person who has a desire to foster the child's tribal affiliation and special needs;
 - (B) A non-Indian married couple or a non-Indian couple in a domestic partnership; or

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(C) A non-Indian person.

(e) Petition to Adopt a Child - Any person(s) wishing to adopt a child shall file a petition, under oath, with the Tribal Court. The petition shall contain:

- (1) The name, age, address and tribal status of the child to be adopted, and documentary proof of the date and place of the birth of the child;
- (2) Documentary proof of the child's membership in the Tribe, eligibility for membership in the Tribe, or membership status with another Tribe, if such proof exists;
- (3) The name, address, age, tribal status and occupation of the petitioner, a statement of the petitioner's relationship to the child, and documentary proof of the petitioner's tribal status or Indian heritage;
- (4) Written proof of the consent to the adoption required in subsection (g);
- (5) The names and addresses, if known, of all persons whose consent to the adoption is required but who have not consented, and the facts and circumstances surrounding the lack of consent;
- (6) The names and addresses of all persons who have or claim a right of custody to or visitation with the child, or who are required to pay for the support of the child; and
- (7) The reasons the petitioner desires to adopt the child.

(f) When Adoptions Permitted - A child may be adopted pursuant to this code only when one or more of the following have occurred:

- (1) The parental rights of the child's parent(s) have been terminated, either voluntarily or involuntarily;
- (2) The child has been abandoned by his or her parents, as determined by Court order; or
- (3) A court has declared the child's parent to be mentally incompetent.

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(g) Written Consent Required

(1) Except as set out below in subsection (i); written consent to an adoption is required of the following persons:

- (A) The child's biological or current adoptive mother;
- (B) The child's biological, acknowledged, or current adoptive father;
- (C) The child's legal guardian or custodian, if he or she is empowered to consent; and
- (D) The child, if he or she is fourteen (14) years of age or older.

(2) Where required by this section, consent shall be in writing and attached to the petition for adoption. Written consent to an adoption shall be signed and acknowledged before a Notary Public or the Court.

- (A) Consent shall not be accepted or acknowledged by the Court unless the consent is signed and acknowledged more than ten (10) days after the birth of the child, unless the Court orders otherwise.
- (B) An interpreter shall be provided if required by the Court.
- (C) The Court shall have the authority to inquire into the circumstances surrounding the granting of consent under this subsection. Additionally, the Court has authority to accept or reject such consent based on the best interests of the child.

(h) Withdrawal of Consent - Written consent to an adoption may not be withdrawn after the entry of a decree of adoption. Consent may be withdrawn before the decree of adoption after a hearing before the Court and a showing, by a preponderance of the evidence, that the consent was obtained by fraud, duress or coercion, or that the best interests of the child require that the consent to the adoption be voided.

(i) When Written Consent Not Required - Written consent to an adoption is not required if:

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- (1) The parent's rights to the child have been voluntarily or involuntarily terminated;
- (2) A court has declared the child's parent to be mentally incompetent; or
- (3) The child's parent has abandoned the child and cannot be located. The petitioner shall provide the Court with proof of efforts to locate the child's parent. The Court shall order that a citation to show cause why the adoption of the child should not be decreed be served upon the child's parent by publication.

(j) Investigation and Report -

- (1) Within sixty (60) days of the filing of a petition for adoption, the tribal ICW Program shall investigate the petitioner and the child. The investigation shall include a criminal background check of the petitioner and a check into the petitioner's driving record and vehicle insurance status; The report shall also include information about how the petitioner fits within the placement preferences of this Chapter
- (2) The tribal ICW Program shall file a written report, including the ICW Program's recommendation whether the adoption is in the best interests of the child, at least ten (10) days before the adoption hearing. A copy of the report shall be served on the petitioner and the child's legal representative, if any.

(k) Adoption Hearing - A hearing shall be held within ninety (90) days of the Court's receipt of an adoption petition to determine whether the adoption is in the child's best interests.

- (1) The Court shall give at least twenty (20) days notice of the hearing to:
 - (A) The child who is fourteen (14) years old or older;
 - (B) The petitioner;
 - (C) The tribal ICW Program;

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- (D) All persons whose consent to the adoption is required;
 - (E) The child's extended family members; and
 - (F) Any other persons the Court deems appropriate.
- (2) In determining the best interests of the child, the Court shall consider, but is not limited to considering:
- (A) The validity of the written consent to the adoption;
 - (B) Any court orders terminating the parental rights of the child's parent(s);
 - (C) The length of time the child has been a ward of the Court, if applicable;
 - (D) Any special conditions of the child;
 - (E) The contact and communication between the biological parents with the child;
 - (F) Pre-adoption reports;
 - (G) Whether the adoptive placement fits within the Tribe's adoptive placement preferences; and
 - (H) The child's relationship with extended family members and how it will be preserved, if appropriate, if the adoption is finalized.
- (1) Procedures - The Court shall follow the following procedures at any adoption hearing:
- (1) The petitioner shall appear personally at the hearing;
 - (2) The Court shall examine all required consents to the adoption to determine whether the consent was given voluntarily and whether the consequences of the consent were fully understood. If the Court

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determines that the validity of any consent is at issue, the Court shall notify all persons whose consent to the adoption is required, and shall require each of them to appear in person before the Court for further inquiry.

- (3) The Court shall examine all persons appearing at the hearing to determine:
 - (A) The eligibility of the child for adoption;
 - (B) The validity of the consent to adoption;
 - (C) The financial, moral, and physical fitness and responsibility of the petitioner; and
 - (D) Whether the best interests of the child will be served by the adoption.
- (4) The Court shall examine members of the child's biological extended family to determine whether the child's legal relationship to his or her extended family should be preserved or terminated and if preserved, how contact shall be included in the adoption decree.

(m) Entry of Adoption Decree - If the Court determines that the adoption is in the best interests of the child, the Court shall enter a decree of adoption as follows:

- (1) In the case of a child who has lived with the adoptive parent(s) for more than one (1) year before the adoption petition is filed, the decree of adoption shall be entered immediately.
- (2) In all other cases, the Court shall order that the child be placed in the legal custody of the adoptive parent(s) until the child has lived with the adoptive parent(s) for at least one (1) year. At the expiration of the year, the Court shall request a supplemental report from the ICW Program. If the Court determines that the adoption serves the best interests of the child, the Court shall enter the decree of adoption immediately.
- (3) The decree of adoption shall include all facts necessary to establish that the child is eligible and suitable for adoption and that the adoptive home

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and parents are adequate and capable of providing for the proper care of the child. If the child is not already enrolled in the Siletz or other Indian tribe and is eligible for enrollment based on ties to one or both biological parents, the Court shall order that the child be enrolled as part of the Decree of Adoption.

(n) Alteration of Birth Certificate - Within five (5) days after the Court has entered the final decree of adoption, the Clerk of the Court shall notify the Division of Vital Statistics of the State Board of Health of the state that issued the child's original birth certificate that the adoption has taken place. The Clerk of the Court shall provide the Division of Vital Statistics with a certified copy of the final decree of adoption and the full name, sex, birthday and names of the child's biological parents, so that a new birth certificate, including the name(s) of the adoptive parent(s) and the new name of the child, if any, can be recorded. The ICW Program will pay the fee required to obtain an amended birth certificate for the child.

(o) Child Assumes Adoptive Surname - A child who is adopted by order of the Court may assume the surname of the adoptive parent(s), unless the Court orders otherwise.

(p) Rights of Adopted Child - An adopted child shall be entitled to the same rights as a biological child of the adoptive parent(s), except that adoption does not confer tribal membership status on an adopted child who is not otherwise eligible for membership in the Siletz Tribe. Adoption does not terminate the legal rights of biological extended family members of the child, except by order of the Court.

(q) Visitation - Adoptive parents shall be encouraged to help the child maintain positive relationships with the child's biological extended family, unless the Court orders otherwise. The adoptive parents shall have the exclusive right to determine the terms, if any, of contact by any person with the child, unless the Court orders otherwise.

(r) Denial of Petition - If the Court determines that the adoption is not in the best interests of the child, the Court shall deny the petition. In such an instance, the Court shall ask the the ICW Program or other agencies to assist in the placement and care of the child pursuant to this Code.

(s) Confidentiality of Records - All records, reports, proceedings, and orders in adoption cases are confidential and permanent records of the Court and subject to the provision of § 8.011 of this ordinance. In addition to the provisions of §8.011, the following provisions apply:

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- (1) Confidential records of the Court pertaining to adoptions shall be sealed and shall not be available for release to or inspection by the public, except by order of the Court.
- (2) Information contained in the records shall be released upon a petition to the Court by the adopted child after he or she has reached eighteen (18) years of age, or upon a showing of good cause by another person who has petitioned the Court for the information. In either case, no information shall be released unless:
 - (A) The biological parent(s) has been given actual and confidential notice by the Court that a petition for the release of information has been filed, or a notice of intent to issue the information has been published in a local newspaper of general distribution without revealing the name of the biological parent; and
 - (B) The biological parent has consented in writing before the Court to release of the requested confidential information; or
 - (C) The Court determines that the need for the information is greater than the right of the biological parent(s) to privacy.
- (3) The Court may refuse to release the name(s) of the adopted child's biological parent(s), but may release other information as long as the information will not lead to the discovery of the name(s) of the biological parent(s).

PART VI
EMANCIPATION

§ 8.040. REQUIREMENTS FOR EMANCIPATION

- (a) When Permitted - The Court may declare a child emancipated after a hearing on a petition for emancipation, or as a dispositional alternative for a child found to be a child-in-need-of-care.
- (b) Eligibility - To be eligible for emancipation, a child must:

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- (1) Be at least sixteen (16) years of age;
- (2) Be self-supporting;
- (3) Understand the consequences and responsibilities that result from being free from parental control and protection; and
- (4) Present the Court with an acceptable plan for independent living.

§ 8.041. INITIATION OF EMANCIPATION HEARING

(a) Initiation of Emancipation Hearing - An emancipation hearing shall be initiated by:

- (1) A petition by the child;
- (2) A petition by the ICW Program; or
- (3) A motion by the Court.

(b) Petition for Emancipation - A petition for emancipation shall state:

- (1) The name, address, age and tribal status of the child;
- (2) The name and address of each living parent of the child;
- (3) The name and address of the child's guardian or custodian, if any;
- (4) A description of the ways in which the child is currently self-supporting;
- (5) The child's plan for independent living;
- (6) The general or limited purposes for which emancipation is sought; and
- (7) The reasons why emancipation would be in the best interests of the child.

§ 8.042. CONSENT

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A child petitioning for emancipation shall obtain the consent of each living parent and any guardian or custodian having control of the person or property of the child. If a person who is required to consent to the emancipation of a child is unavailable or his or her whereabouts are unknown, or if a parent, guardian or custodian unreasonably withholds consent, the Court, acting in the best interests of the child, may waive the consent requirement.

§ 8.043. LEGAL REPRESENTATIVE

The Court may appoint a legal representative to represent the best interests of the child at the emancipation hearing.

§ 8.044. POWER OF AN EMANCIPATED CHILD

The Court may emancipate a child and remove the disabilities of minority if emancipation is found to be in the best interests of the child. Emancipation may be for general or limited purposes. Except for specific constitutional and statutory age requirements for voting and the use of alcoholic beverages, a child who has been emancipated for general purposes has the power and capacity of an adult, including but not limited to:

- (a) The right to be domiciled where he or she desires;
- (b) The right to receive and control all earnings;
- (c) The power to sue and be sued; and
- (d) The power to enter into contracts.

PART VI
Immunity and Severability

§ 8.045 Sovereign Immunity

The sovereign immunity of the Tribe, the Tribal Council, and tribal employees is not waived by this Ordinance.

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§ 8.046 Severability

If any provision of this Ordinance or its application to any person, entity, or circumstance is held to be invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected.