

Title 8 – Juveniles
Chapter 7 – Youth in Need of Care

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Legislative History

Enacted:

Juvenile Code, Ord. 170 (6/30/03), BIA (7/3/03).

Repealed or Superseded:

Juvenile Code, Ord. 68 (12/89), Enacting Res. 89-12-98 (repealing Ord. 40 and all other previous youth ordinances).
Youth Code, Ord. 40 (2/8/83), Enacting Res. 83-2-20, BIA (rescinded 5/5/83, approved 6/25/83) (repealing all previous youth ordinances).

8-07.010 Youth-in-Need-of-Care (Defined).

- (A) A youth in need of care is a youth who is found to be in one or more of the following states or conditions (the examples after each type of youth serve as guidelines to the Court but are not all-inclusive):
- (1) **Neglected** - a neglected youth shall include, but is not limited to the following:
 - (a) A youth whose parent, guardian or custodian fails to provide such food, shelter, clothing, education, medical attention or other care necessary for his or her health, spiritual growth, morals, or well being;
 - (b) A youth whose parent, guardian or custodian has refused tribal or other assistance necessary to provide for the basic needs of the youth and such refusal is likely to result in serious harm as determined by medical or professional persons;
 - (c) A youth who lacks “parental-type” control by reasons of the fault or habit of his or her parent, guardian, or custodian;

- (d) A youth under ten (10) years of age who is left without competent supervision overnight for other than emergency reasons;
- (e) A youth who is exposed to dangerous situations at home or elsewhere, as a result of negligence of his or her parent, guardian or custodian;
- (f) A youth under ten (10) years of age who is left alone or unsupervised in a car while his or her parent, guardian or custodian is in a bar;
- (g) A youth who is allowed to accompany his or her parent, guardian or custodian into a bar;
- (h) A youth who is left with an irresponsible babysitter (*e.g.*, babysitter is intoxicated, too young, etc.);
- (i) A youth who is allowed access to alcoholic beverages and/or drugs;
- (j) A youth who is fourteen (14) years of age or under and has more than five (5) unexcused absences from school in a quarter;
- (k) A youth who is not dressed adequately for weather conditions;
- (l) A youth whose health is threatened by exposure to alcohol, drugs or tobacco;
- (m) A youth who is expected to provide prolonged and unsupervised babysitting services;
- (n) A youth who has been a passenger in an automobile, boat or other motorized vehicle driven by an intoxicated person, with the knowledge or approval of the youth's parent, guardian or custodian;
- (o) A youth who is allowed to be outside and unsupervised after curfew; or
- (p) A youth who is not provided the proper guidance, control, and supervision that would enable him or her to attain his or her

full potential and become a credit to himself or herself, his or her family, and his or her tribe.

- (2) **Physically Abused** - A physically abused youth shall include, but is not limited to the following:
- (a) A youth who has received or is likely to receive gross, excessive, or repeated physical treatment which results in marks, bruises, burns, welting, abrasions, lesions, broken bones, or any damage to the body;
 - (b) A youth who is subjected to unusual or inappropriate punishments;
 - (c) A youth who is subjected to violent rapping with knuckles, shaking, pinching, ear pulling or hair pulling;
 - (d) A youth with multiple injuries inflicted upon him by other than accidental means; or
 - (e) A youth who is knocked unconscious by a parent, guardian or custodian.
- (3) **Emotionally Abused** - an emotionally abused youth shall include, but is not limited to the following:
- (a) A youth whose parent, guardian or custodian fails to love, listen, guide, or pay attention to him or her;
 - (b) A youth who receives no moral, spiritual or intellectual instruction, by which a youth learns how to become part of the community, from his or her parent, guardian or custodian;
 - (c) A youth who is involuntarily separated or isolated from other members of the family (*e.g.*, locked in or locked out);
 - (d) A youth whose parent, guardian or custodian verbally harasses, teases, swears at, or ridicules, or whose parent, guardian or custodian allows others to do so; or
 - (e) A youth who is subjected to unusual or inappropriate punishments.

- (4) **Sexually Abused** - a sexually abused youth shall include, but is not limited to the following:
- (a) A youth exposed to non-contact sexual abuse such as obscene jokes or telephone calls, peeping, sexual propositions, pornography, etc.;
 - (b) A youth forced to or allowed to watch sexual acts, sexual violence, or exposed to the sexual or other intimate parts of another person;
 - (c) A youth who through physical or psychological manipulation or force is, or is likely to be, involved in the touching of or contact with the sexual or other intimate parts of the person of another or themselves for the purpose of arousing or gratifying the sexual desire of the other person; or
 - (d) A youth who through physical or psychological manipulation or force is, or is likely to be, involved in the touching of or contact with his or her own sexual or other intimate parts by another person for the purpose of arousing or gratifying the sexual desire of the other person.
- (5) **Nutritionally Abused** - a nutritionally abused youth shall include, but is not limited to the following:
- (a) A youth whose parent, guardian or custodian provides inadequate or inappropriate foods (*e.g.*, alcohol, excessive junk foods, etc.);
 - (b) A youth whose parent, guardian or custodian misuses benefits intended for the youth such as selling or squandering food stamps or commodities; or
 - (c) A youth whose parent, guardian or custodian consistently fails to maintain adequate food in the household.
- (6) **Dependent** - a dependent youth shall include, but is not limited to the following:
- (a) A youth who is homeless or destitute or without proper support or care;

- (b) A youth who lacks proper care by reasons of the mental or physical condition of his or her parent, guardian or custodian;
 - (c) A youth who has no parent, guardian or custodian able to provide for him or her because of incarceration or hospitalization for a physical or mental illness; or
 - (d) A youth who has no parent, guardian, or custodian available and able to care for him or her.
- (7) **Uncontrollable** - an uncontrollable youth shall include, but is not limited to the following:
- (a) A youth who is habitually truant;
 - (b) A youth who is habitually disobedient of the reasonable and lawful commands of his or her parent, guardian or custodian;
 - (c) A youth who is a habitual runaway; or
 - (d) A youth who habitually engages in activities so as to injure or endanger the morals or health of himself or herself or others.
- (B) Child raising practices including reasonable parental discipline, which do not harm the child's health, safety and welfare are not child abuse or neglect.
- (C) Child abuse and neglect are not always revealed by physical examination of the child or statements of a child. Behavior and emotional temperament of the child (and of the parent or perpetrator) may give more information about the existence of past or present maltreatment. The Court shall give weight to professional evaluations of these factors when deciding if a youth is in need of care.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

Subchapter I – Custody Orders and Warrants

8-07.020 Emergency Custody Order.

- (A) A Youth Court judge or judicial officer may issue an emergency custody order upon a sworn written statement of facts showing probable cause to believe the youth is in need of care and that his or her health, safety and welfare will be seriously endangered if not taken into custody.

- (B) The emergency custody order shall specifically name the youth to be taken into custody, state the date and time issued, the place where the youth is to be taken and name the person(s) authorized to take the youth into custody.
- (C) The emergency custody order shall be served during daylight hours unless service at night is specifically authorized in the order.
- (D) The emergency custody order is valid and may be served for a period of forty-eight (48) hours after it is issued.
- (E) A youth taken into custody under this Section may be held until the conclusion of the Preliminary Inquiry unless otherwise ordered by the Court.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-07.030 Bench Warrant.

A Youth Court judge or judicial officer may issue a warrant for a person's arrest for contempt upon failure to appear at any ordered conference or hearing either in person or by legal representative.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

Subchapter II – Preliminary Inquiry

8-07.040 Purpose of Preliminary Inquiry.

If a youth is placed in shelter care pursuant to Chapter 8-05 the Court shall conduct a preliminary inquiry within forty-eight (48) hours of the time the Request for Preliminary Inquiry is filed for the purpose of determining:

- (A) The membership and Indian status of the youth;
- (B) The best interest of the youth and the Tribe with regard to any action to be taken;
- (C) Whether there is probable cause to believe the youth is in need of care; and
- (D) Whether continued shelter care is necessary pending further proceedings.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-07.050 Request for Preliminary Inquiry.

A Request for Preliminary Inquiry shall include:

- (A) The name, date of birth, residence, and tribal status, if known, of the youth;
- (B) The name, residence and tribal status of the youth's parent(s), guardian or custodian;
- (C) A citation to the specific section of this Title that gives the Court jurisdiction over the proceeding;
- (D) A plain and concise statement of the facts that supports the allegation that the youth is in need of care; and
- (E) If the youth is in shelter care, the place of shelter care and the time the youth was taken into custody.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-07.060 Presence of Parent(s), Guardian or Custodian.

If the youth's parent(s), guardian or custodian is not present at the preliminary inquiry, the court shall determine what efforts have been made to notify and to obtain the presence of the parent(s)', guardian's or custodian's. If it appears that further efforts are likely to produce the parent(s), guardian or custodian presence, the inquiry shall be recessed for a reasonable period of time and continued efforts to obtain the presence of the parent(s), guardian or custodian shall be made.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-07.070 Release of Youth.

If at the conclusion of the Preliminary Inquiry the Youth Court finds:

- (A) That probable cause does not exist to believe the youth is in need of care, the complaint shall be dismissed and the youth shall be released to the custody of his or her parent(s), guardian or custodian.
- (B) That probable cause exists to believe the youth is in need of care, the youth will not be returned to the custody of his or her parent(s), guardian or custodian, unless to do so would not endanger the youth and would be in the youth's best interest.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-07.080 Placement of Children.

- (A) A youth alleged to be in need of care shall not be placed in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile offenders.
- (B) A youth alleged to be in need of care may be placed, pending an inquiry or hearing, in the least restrictive of the following locations based on the facts of the case:
 - (1) With a responsible family member;
 - (2) With a responsible community member; or
 - (3) In a foster home or other facility approved by the Tribe, for shelter care.
- (C) If the alleged perpetrator of abuse is known and he or she resides in the home of the victim, such perpetrator may be ordered removed from the home.
- (D) If the child cannot be returned to his or her parents, guardian or custodian, the child shall be placed in the least restrictive setting which most approximates a family and in which his or her special needs, if any, may be met. The child shall also be placed in reasonable proximity to his or her home, where appropriate, taking into account any special needs of the child.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-07.090 Interim Orders.

The Court may make orders necessary for the protection and well being of the youth and the family, including but not limited to evaluation and treatment (including involuntary residential treatment) for substance abuse, mental illness, and emotional disturbance; parenting classes; mandatory school attendance; visitation; and other services or activities for the benefit of the youth and his or her family. The Court may make a particular placement conditional on compliance with any of its orders.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

Subchapter III – Fact Finding Petition

8-07.100 Contents of Fact Finding Petition.

The presenting officer shall initiate a fact-finding hearing under this Chapter by filing a petition. The petition shall state:

- (A) The name, date of birth, residence, and tribal status of the youth;
- (B) The name, residence, and tribal status of the youth's parent(s), guardian or custodian;
- (C) A citation to the specific Section of this Title that gives the Court jurisdiction over the proceedings;
- (D) A detailed statement of facts and reasons that support the allegation that a youth is in need of care; however, if a Request for Preliminary Inquiry was filed previously, the petition may incorporate by reference the contents of the Request; and
- (E) If the youth is in shelter care, the place of shelter care and the time taken into custody. The location of the placement shall not be disclosed if necessary for the protection of the youth.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-07.110 Time Limits.

The Court shall set a date for the hearing within thirty-five (35) days of the date the petition was filed.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-07.120 Summons.

- (A) At least five (5) days prior to the hearing, the Court shall issue a summons to:
 - (1) The youth;
 - (2) The youth's parent(s), guardian or custodian;
 - (3) Any person the Court believes necessary for the hearing; and

- (4) Any person the parties believe necessary for the hearing.
- (B) The summons shall contain the name of the Court and the date, time and place of the hearing.
- (C) A copy of the petition shall be attached to the summons.
- (D) The summons shall be delivered in accordance with the Rules of Civil Procedure.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

Subchapter IV – Court Fact Finding Hearing

8-07.130 Purpose of Fact Finding Hearing.

The Court shall conduct the fact-finding hearing for the sole purpose of determining whether the youth is in need of care.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-07.140 Agreed Order.

The parties to a Fact-Finding Hearing may agree to a proposed order that resolves some or all of the issues of the case. Before deciding whether to approve the Agreed Order, the presiding judge shall:

- (A) Explain in detail the provisions of the proposed agreed order, and the consequences of failure to comply with the agreed terms;
- (B) Assure that consent to the proposed order is not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any other party to the case;
- (C) Explain the right to a spokesperson and/or counsel;
- (D) Explain that the Tribe has the burden of proving the allegations of the Petition and that he or she does not have to consent to the proposed order; and
- (E) Explain that once he or she agrees to the proposed order and it is signed and entered by the Court, it will be too late for he or she to change his or her mind.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-07.150 Testimony.

The Court shall hear testimony concerning the circumstances that gave rise to the petition.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-07.160 Rules of Evidence.

- (A) **Purpose.** The purpose of these rules of evidence is to ensure that the Court is able to determine the truth of a matter with a minimum of delay, confusion and uncertainty.
- (B) **General Rules.**
 - (1) The rules of evidence used in state and federal courts shall not apply to hearings before the Tribal Court. But where there is more than one kind of evidence about the same subject, the Court should hear the most reliable kind of evidence. In oral testimony, persons who testify from their personal knowledge, such as first-hand observation of, or participation in, the event described, shall be preferred as witnesses to persons who have second-hand knowledge of the event.
 - (2) Evidence submitted during court hearings must be related either to the issues before the Court or to the weight and credibility which should be given to other evidence. When questioned by the Court or other party, the party who wishes to present certain evidence shall explain why he or she thinks the evidence is relevant.
 - (3) When the relevance or reliability of evidence is challenged and the Court decides whether or not to use the evidence, it shall explain the decision and, if the evidence is used, state what importance the Court assigns to the evidence.
- (C) **Oaths.** Before testifying at a Court hearing, every witness shall first state before the Court that he or she will testify to the whole truth and nothing but the truth.
- (D) **Questioning Witnesses.**

- (1) When questioning a witness, the Court and parties or their representatives shall not ask questions in such a way as to suggest the answer desired, unless the witness is being cross-examined or is clearly hostile to the person asking questions.
- (2) The Court shall determine the order in which parties or their representatives shall be allowed to question witnesses. The Court shall protect the witnesses from harassment or unnecessarily repetitive questioning.
- (3) The Court may call and question any witnesses on its initiative.

(E) **Testifying.**

- (1) Testimony of a witness may be presented in written form, if the witness is unable to appear in person to testify, if the evidence presented in writing is not contradicted by other parties, or if the written testimony is offered to support a motion or an uncontested request for relief. Written testimony should show clearly who gave it and when the witness gave it. Testimony should be given under oath, if possible.
- (2) A youth's testimony shall be taken outside the courtroom, and shown in the courtroom by closed circuit television, if the youth would suffer significant emotional distress as a result of testifying in court.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-07.170 Rules for Discovery.

Discovery under this Title shall comport with the provisions located in the Rules of Civil Procedure.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-07.180 Burden of Proof.

The Tribe shall prove by clear and convincing evidence that the youth is in need of care.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-07.190 Preparation of Predispositional Report.

At the end of the Fact Finding Hearing, the Court may order that a predispositional report be drafted.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-07.200 Notice.

The dispositional hearing date shall be set at the Fact Finding Hearing and such announcement shall constitute notice.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-07.210 Disposition at Conclusion of Fact Finding Hearing.

A dispositional hearing can be held at the conclusion of the Fact Finding Hearing if the Court determines that such action is in the best interests of the youth.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

Subchapter V – Predispositional Report

8-07.220 Who To Submit; Purpose; Contents.

The Family Services Representative shall prepare a written report describing all reasonable and appropriate alternative dispositions. The report shall contain (A) a specific plan for the care of and assistance to the youth and his or her parent(s), guardian or custodian calculated to resolve the problems presented in the petition; (B) shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the youth and his or her parent(s), guardian or custodian under the proposed plan; and (C) the report shall also contain recommendations from all agencies involved.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-07.230 Placement.

If placement with someone other than the youth's parent(s), guardian or custodian is recommended, the report shall contain specific reasons for not recommending placement of the youth with his or her parent(s), guardian or custodian.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-07.240 Service.

The Family Services Representative shall file the predispositional report with the Court and provide copies to all the parties at least three (3) days before the dispositional hearing.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

Subchapter VI – Dispositional Hearing

8-07.250 When to Hold Hearing.

A dispositional hearing shall take place not more than thirty-five (35) days after the fact-finding hearing.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-07.260 Purpose of Hearing.

At the dispositional hearing:

- (A) The Court shall hear testimony for the purpose of determining the proper disposition of the youth.
- (B) All parties shall be given the opportunity to contest the factual contents and conclusions of the predispositional reports submitted for consideration.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-07.270 Predispositional Reports.

At the dispositional hearing, the Court shall consider:

- (A) the predispositional report submitted by the family services representative;
and
- (B) any alternative predispositional reports submitted for review.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-07.280 Dispositional Order is Final.

The dispositional order constitutes a final order for purposes of appeal in accordance with the Rules of Appellate Procedure.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-07.290 Dispositional Alternatives.

- (A) **Youth-in-need-of-care:** If a youth has been determined to be in need of care, the Court may order any of the following dispositions based on the best interests of the youth:
- (1) Permit the youth to remain with his or her parent(s), guardian or custodian subject to such limitations and conditions as the Court may prescribe;
 - (2) Place the youth with an extended family member within the exterior boundaries of the Swinomish Indian Reservation subject to such limitations and conditions as the Court may prescribe;
 - (3) Place the youth in an extended family member's home outside the exterior boundaries of the Swinomish Indian Reservation subject to such limitations and conditions as the Court may prescribe;
 - (4) Place the youth in a foster home within the exterior boundaries of the Swinomish Indian Reservation, which has been licensed or approved by the Tribe subject to such limitations and conditions as the Court may prescribe;
 - (5) Place the youth in a foster home or other facility approved by the Tribe that is located outside the exterior boundaries of the Swinomish Indian Reservation;
 - (6) Transfer legal custody to an agency responsible for the youth in need of care; or
 - (7) Order legal custody by the Court and place pursuant to this Section.
- (B) **Review:** Dispositional orders are to be reviewed by the Court at least every six (6) months.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

Subchapter VII – Modification of Dispositional Order

8-07.300 Modification of Dispositional Order.

A dispositional order may be modified if the court determines that a substantial change in circumstances requires the modification of the award and the modification is in the best interests of the child. The Court may modify a dispositional order at any time upon motion of the following:

- (A) The youth;
- (B) The youth's parent(s), guardian or custodian;
- (C) The Guardian ad Litem;
- (D) The Family Services Representative; or
- (E) The presenting officer.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-07.310 Hearing on Motion to Modify.

If any party opposes the motion to modify the dispositional order, the Court shall conduct a hearing to review its dispositional order if the petition alleges substantial change of circumstances.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-07.320 Review of Performance.

The Court shall review the performance of the youth, the youth's parent(s), guardian, or custodian, the Family Services Representative, and any other parties to the disposition.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).