SHOALWATER BAY INDIAN TRIBE
CODE OF LAWS

TITLE 20

FAMILY

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Chapter 20.01 General Provisions

20.01.010 Jurisdiction

The Shoalwater Bay Tribal Court shall have jurisdiction over cases arising under this code. The jurisdiction of the Court over persons and territory is limited only by the **Constitution** of the Shoalwater Bay Indian Tribe and as limited by Section 20.10.030 of this code regarding divorce. The Court shall have the power to decide questions of jurisdiction which may be raised under this title.

20.01.020 Definitions

When the words listed in this section appear in this title, they shall have the following meaning unless a different meaning is clearly intended:

a) "Child" and "Youth" mean a person under the age of eighteen (18) years; a person eighteen (18) years of age or older concerning whom proceedings are commenced in the Shoalwater Bay Tribal Court prior to his or her eighteenth birthday; and any person eighteen (18) years of age through twenty (20) years of age under the continuing jurisdiction of the Shoalwater Bay Tribal Court.

b) "Community Property" means all property acquired after marriage by either spouse or both, which is not "separate property" as defined below, in subsection (i).

c) "Court" means Tribal Court unless otherwise indicated.

d) "Custodian" means a person or entity having legal authority over a child either by court order or parent's permission. This term generally applies to foster parents, child placing agencies, and persons temporarily caring for a child at the request of a parent.

e) "Extended family" means grandparent (including great and great-great); aunt; uncle; first or second cousin; niece; nephew; and sibling. Any of these relationships which exist by virtue of being "in-laws" or "step" relations are also extended family. Any member of the Shoalwater Bay Tribal community who is reliable, responsible, loving, and willing to care for a child may be considered extended family.

f) "Guardian" means a person, usually not a parent, to whom the Court has given legal responsibility for a minor.

g) "Marijuana" means marijuana as defined in Title 02: 02.00.07 g).

h) "Minor" means a person under the age of eighteen (18) years of age and any person against whom–or whom on behalf of—legal proceedings were commenced prior to his or her eighteenth birthday.

i) "Parent" means a biological or adoptive parent whose parental rights have not been terminated. It does not include a parent who has not acknowledged or established parentage as provided under Chapter 20.09 of this code.

j) "Separate property," means property owned by either spouse before marriage and property acquired by him or her during the marriage by gift, bequest (money given in a will), devise (other property given in a will), or descent (property from a deceased person who didn't have a will). Separate property includes the rents, issues, and profits from such property. Any property held in trust by the United States Government for the benefit of the party, or acquired by virtue of the Tribal status of the party, whether acquired before or during the marriage, shall be the separate property of that party.

k) "Tribal community" means all members of the Shoalwater Bay Indian Tribe and members of their households, residents of the Shoalwater Bay Reservation, persons with significant ties to the Shoalwater Bay Indian Tribe, and persons consenting to the jurisdiction of the Shoalwater Bay Indian Tribe.

20.01.030 No Right to a Jury

There is no right to a jury in any proceeding under this title.

20.01.040 Sovereign Immunity

The sovereign immunity of the Shoalwater Bay Tribe shall in no manner be waived by this title. The Tribal Council members, employees, appointees, and

volunteers of the Tribe (including but not limited to the Community Health Representative, alcohol program, foster parents, tribal law enforcement, mental health, tribal court personnel, head start, and other persons and departments serving children and families) are cloaked with the sovereign immunity of the Shoalwater Bay Tribe. No person referred to above shall be liable for the inability or failure to provide services to any person. However, this section shall not shield any person from his or her duty to report abuse or neglect under Section 20.04.020 or from the penalties for failure to report under Section 20.04.040.

20.01.050 Notice of Hearing

Except as otherwise provided in this title, every document which is required or allowed to be served on a person shall be given by:

a) Personal service by the Director of Social Services, Court personnel, and/or the Law Enforcement personnel;

b) Certified mail with return receipt requested and by regular mail, or

c) Any other method approved by the Court.

20.01.060 Recognition of Other Courts' Orders

The Court may give recognition to state and other tribes' court orders as a matter of comity (courtesy) if the order does not violate the **Indian Child Welfare Act** and the Court granting the order had jurisdiction over the case and the order does not violate the public policy of the Shoalwater Bay Tribe.

20.01.070 Notice to Other Tribes

If the Court or any party, in a proceeding involving the out-of-home-placement of a child, has reason to believe that the child is a member or eligible for membership in another tribe, the Court Clerk shall be directed to give written notice of the proceeding to the other tribe. The notice shall ask that the tribe respond in writing within fifteen (15) days of receiving the notice and to state whether it intends to act in the matter.

20.01.080 Transfer of Jurisdiction – Authority of Court

The Court has the authority to accept transfers of jurisdiction from other courts or governments. The Court shall only transfer a case under this title to another court or government if it has no jurisdiction over the case or for compelling reasons.

20.01.090 Transfer of Jurisdiction - Hearings

In cases where more than one government has an interest in the proceeding, the Court shall hold a hearing upon notice to the interested parties. The Court shall weigh the following factors and decide whether or not the Shoalwater Bay Tribal Court has jurisdiction, and if so, whether compelling reasons exist to transfer jurisdiction:

a) The wishes of the parent, custodian, or guardian;

b) The wishes of the child, if he or she is able to understand the meaning of a transfer of jurisdiction;

c) The recommendation of tribal law enforcement and of social services staff;

d) The place each party lives and their tribal status;

e) The ties and contacts each party has with the communities involved; and

f) Whether the other government (tribe) has responded to the notice.

20.01.100 Transfer of Jurisdiction - Hearings

The Court may make any order which will protect the child, pending the outcome of any transfer of jurisdiction proceeding.

Chapter 20.02 Roles and Duties

20.02.010 Role of the Family

The family, in its broadest sense, is the most important resource and advocate for the well-being of the Tribe's children. While some family members may not be capable of protecting and advocating for children, those extended family members who are able to protect and advocate for children shall be given an opportunity to be made part of all proceedings under the code including but not limited to placement, family protection plans, and informal agreements. This requirement is intended to be applied with flexibility, since it is not practical to give all extended family members notice of proceedings under this code. However, Tribal Social Services, the Child Protection Team [CPT], court personnel, tribal agencies, and agencies working with the Tribe shall, in all proceedings under this code, give respect and consideration to family members and work in partnership with families for the protection of children.

20.02.020 Family Resolutions – Informal Meetings

Members of the family, the Child Protection Team, social services staff, and any other people who are willing and interested in helping resolve family related problems may convene an informal meeting to try to resolve these problems. A judge may participate in the meeting, on an informal basis, to assist the parties in reaching a solution, or the parties may formally submit the results of their meeting in the form of an Agreed Order under Section 20.04.220 of this code.

20.02.030 Child Protection Team

The Tribal Council shall appoint a Child Protection Team [CPT]. The Team shall have representatives from tribal law enforcement, tribal social services, and others who have special skills or interest in family and child welfare. Each member of the Child Protection Team shall sign a Confidentiality Agreement, filed with the Tribal Council. Compliance with the agreement shall be a condition of serving on the Team. The agreement shall be in a form approved by the Tribal Council.

20.02.040 Indian Child Welfare Worker - Appointment

The Tribal Council may appoint or employ an Indian Child Welfare Worker. The Indian Child Welfare Worker shall serve on the Child Protection Team. The Tribal Council and the Child Protection Team have the power to delegate authority and assign duties to the Indian Child Welfare Worker, including but not limited to those in Section 20.04.090. The authority and duties of the Indian Child Welfare Worker may be set forth in a job description.

20.02.050 Child Protective Services

The Shoalwater Bay Indian Tribe may designate a person or agency to provide child protective services to the Shoalwater Bay Indian Tribe. Such services may include emergency removal of a child for out-of-home-placement and investigation of child abuse and neglect. The duties and authority of the cooperating person or agency shall be set forth by agreement with the Shoalwater Bay Indian Tribe.

[Cross Reference - See Sections 20.04.080 Role of Law Enforcement, and 20.04.090 Duties of the Child Protection Team]

20.02.060 Presenting Officer

The Tribal Council may appoint or employ a Presenting Officer to represent the Shoalwater Bay Tribe in child welfare matters. The Presenting Officer's authority and duties may be set forth in a job description or by resolution of the Tribal Council.

Chapter 20.03 Court Proceedings Involving Juveniles

20.03.010 Notice

In all proceedings before the Shoalwater Bay Tribal Court where a minor is the subject of the proceedings, including civil and criminal matters and civil traffic infractions, notice of the proceedings shall be given to the minor, his/her parent(s), guardian, or custodian; and their attorney or spokesperson, if any; within the time limits prescribed for that particular proceeding.

20.03.020 Rights of Juveniles

Minors appearing before the Shoalwater Bay Tribal Court shall have the same rights as adults appearing before the Court.

20.03.030 Hearings to be Closed – Parents Presence Required

Hearings before the Shoalwater Bay Tribal Court, in all cases where a minor is the subject of the proceedings, shall be closed to all persons except the parties, their counsel, Social Services, and witnesses called by the parties. The Court shall read this section together with Section 20.02.010 in determining who shall be present at a hearing.

The parents, custodian, or guardian shall be present at all such hearings unless his or her presence is waived by the Court for good cause shown. If a parent(s), guardian, or custodian cannot be present, the Court may appoint a Guardian Ad Litem for the minor.

20.03.040 Records

Court and law enforcement files on minors shall be confidential. Records shall be made available only to:

a) The minor and his spokesperson;

b) The minor's parent(s), custodian, or guardian; and

c) The Tribe's prosecutor/Presenting Officer.

20.03.050 Age of Capacity

Persons under the age of six (6) are presumed not to have the capacity to have any mental condition required for conviction of a crime (such as intent, negligence, willfulness, etc.) This section does not apply to children as witnesses in civil or criminal matters.

20.03.060 Sentencing of Minor 'Defendants'

In sentencing a minor 'defendant', the Court may impose any of the following sanctions in lieu of all or part of the fine and/or jail time specified for a particular offense: community service hours, counseling, treatment, or other alternative as the Court may determine to be just.

20.03.070 Other Rules Applicable

Where a process is not specified in this chapter, cases involving minors shall proceed under the same provisions applicable to adults in like circumstances.

Chapter 20.04 Child in Need of Care

20.04.010 Child-in-Need-of-Care

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

A "child-in-need-of-care" is one who:

a) Has been neglected. This term includes:

- A child who is not receiving the food, clothing, shelter, medical care, education, or supervision needed for his or her well-being or development;
- An infant who is failing to thrive;
- A child who is not dressed adequately for weather conditions;
- A child who is truant;
- A child left with a babysitter who is intoxicated, irresponsible, or too young;
- A child who lacks parental control because of the habits or fault of the parent(s), guardian, or custodian;
- A child who is doing the work of a parent in running a household because the parent refuses or fails to act as a parent or forces the child;
- A child exposed to a dangerous situation as a result of parental negligence;

- A child whose parent(s) misuse benefits intended for the child, such as selling or squandering food stamps or commodities;

- An unborn or nursing child whose mother is using alcohol or other drugs, to an extent that the fetus or baby may be endangered;

- An unborn child whose mother is not receiving adequate prenatal care;

- A child who is allowed access to alcohol, Marijuana or other drugs;

- A child who is allowed to be out after curfew;

- A child who is a runaway; or

- A child with untreated head lice or other untreated health issues.

- A Youth/Child whose Parent(s) or Guardian is unable, unwilling, or unavailable to care for the Youth/Child(ren)

- A Youth/Child who fails to obey the Lawful commands of their Parent(s) or Guardian

b) Has been physically abused. This term includes:

- Any bruising, welting, abrasion, lesions, burns, broken bones, or other damage to the body, not clearly caused by pure accident;

- A child who has been given inappropriate food, drink or drugs or a child who is suffering from malnutrition; or

- Inappropriate punishment.

c) Has been emotionally maltreated. Emotional maltreatment causes impaired psychological growth and development of the child. Both community values and professional expertise should be looked at when deciding whether emotional maltreatment has taken place. Some indicators of emotional maltreatment are:

- The child's social relationships are seriously impaired: very low self-esteem, a consistent pattern of emotional difficulties such as listlessness, apathy, depression and self-deprecating remarks;

- Serious inability of the child to respond appropriately to the normal behavior of adults (e.g. the child cowers, or ingratiates himself to adults);

- Rejection: refusal to accept the child;

- Ignoring: the parent deprives the child of essential responsiveness which stifles emotional growth and development of the child;

- Ridicule/Terrorizing: verbal assaults creating a climate of fear, bullying the child, name-calling, destroying the child's possessions, or attacking beloved people or pets;

- Isolating: cutting a child off from normal social experiences, preventing a child from forming friendships, or a child who is locked in or locked out of the home or who leaves home because of partying in the home;

- Corrupting: teaching a child socially deviant behavior such as rewarding aggression, delinquency, or sexually precocious behavior;

- Penalizing a child for positive, normal behavior; or

- Discouraging the attachment between care-giver and infant, failure to thrive and physical abuse may follow.

d) Has been sexually abused. This term includes:

- Contacts or interactions between a child and an adult when the child is being used for the sexual stimulation of the perpetrator or another person;

- Sexual abuse may also be committed by a person under the age of eighteen (18) when that person is either significantly older than the victim or when the perpetrator is in a position of power or control over another child;

- The exposure of the perpetrator's genitals in the presence of a child, or any other sexual act, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose;

- Obscene calls, jokes, peeping, or sexual propositions;

- Child pornography or sexual positioning for photos;

- Forcing a child to watch sexual acts or sexual violence;
- Unwanted hugs, kisses, pinching;
- French kissing, handling genitals, masturbation, mouth to genital contact;
- Oral, anal, or vaginal rape;
- Sexual maiming or sexual bondage.

This code recognizes that a parent may need to place a child with another caregiver for a brief or extended time. This is not in itself grounds for a child in need of care action, provided the substitute caregiver is adequately caring for the child. However, a parent who has placed a child with another person because he or she is unable to adequately care for a child is still expected by the community to work toward becoming a good parent.

REPORTING ABUSE AND NEGLECT

20.04.020 Reporting Abuse and Neglect

The care of children is both a family and a tribal responsibility. Any person who has reason to suspect that a child has been abused or neglected shall immediately report the abuse or neglect to the Tribal Social Services Department, Tribal Law Enforcement, or to any person or agency designated by the Tribal Council to receive reports. Law enforcement must inform Social Services of any reports of abuse, sexual assault, or neglect immediately.

Reporting under this section is mandatory for all medical and mental health professionals; court personnel; foster parents; law enforcement; members of the clergy; and tribal employees (including persons working on contract for the tribe) who perform services to the community in the areas of education, health and human services.

20.04.030 Immunity

All persons who report child abuse or neglect, in good faith, are immune from civil liability and criminal prosecution.

20.04.040 Sanctions for Not Reporting

Any person who is required to report abuse or neglect under Section 20.04.020 and who knowingly fails to report abuse or neglect is subject to a civil fine not to exceed $5,000.00.

20.04.050 Contents of the Report

A report of abuse or neglect may be made orally but should be followed by a written report including:

a) The name, age, address, and tribal status of the child, if known;

b) A statement of the facts on which the report is based, including the date, time, and location of the events; and

c) The name of the reporter.

20.04.060 Confidentiality Policy

Child abuse or neglect reports are confidential. This confidentiality shall not be interpreted to hamper cooperation between agencies, which is necessary to properly investigate child abuse and neglect. Where there is a conflict between confidentiality and the need for communication between agencies and departments, protection of the child shall be the overriding consideration.

20.04.070 Response to the Report – Tribal Law Enforcement to be Notified

A report that a child is in need of care may come from a community member, a school representative, state Child Protective Services or any of the mandatory reports listed in Section 20.04.010. Tribal law enforcement shall be immediately notified of the report in writing, regardless of who received the initial report.

20.04.080 Role of Law Enforcement

Tribal Law Enforcement shall be responsible for the following when requested to do so by the Tribal Prosecutor and/or Social Services:

a) Conducting criminal and civil investigations which may be associated with a report that a child is in need of care;

b) Coordinating with other departments or agencies;

c) Providing protection and assistance in the removal and placement of children;

d) Taking custody of a child if the officer believes the child is in immediate and serious danger and removal is necessary for the child's safety or well-being;

e) When a Presenting Officer is unavailable, contact Social Services to file Petition for Child-in-Need-of-Care, on behalf of the Shoalwater Bay Indian Tribe; and

f) Work with the Child Protection Team to notify the parent(s), guardian, or custodian if he or she is unaware that the child has been placed out of the home. The location of the placement shall not be released, if necessary for the child's protection.

20.04.090 Duties of the Child Protection Team

The Child Protection Team shall:

a) Have authority to take custody of a child if the Child Protection Team reasonably believes the child is in immediate and serious danger and removal is necessary for the child's safety or well-being. The Child Protection Team shall be accompanied by law enforcement unless law enforcement is unavailable;

b) Take the lead role in finding appropriate placements of children;

c) Provide assistance to families to prevent out-of-home placement and to reunite families;

d) Prepare reports and appear in Court as required under this code and by the Court;

e) Coordinate and communicate with all agencies and departments involved in the protection of children;

f) Assist law enforcement in investigations, upon request; and

g) Appear in state and other tribes' courts as experts and on transfer of jurisdiction cases.

h) Participate in Local Indian Child Welfare Advisory Committee (LICWAC) meetings.

EMERGENCY PLACEMENT OF CHILDREN

20.04.100 Emergency Orders for Taking Custody of a Child - When Needed

An emergency custody order from the Shoalwater Bay Tribal Court is required when any agency or person outside of the Tribe removes or places a child in an emergency situation. (Court orders for non-emergency situations are also

required and are covered later in this title.) Tribal Social Services and/or Presenting Officer shall obtain such an order if there is sufficient time before the removal or placement is necessary.

20.04.110 Emergency Custody Orders - Contents

The Tribal Court may issue an emergency custody order upon an oral or written statement of facts showing probable cause to believe that a child is in need of care and that his or her health, safety, and welfare will be seriously endangered if not taken into custody.

The order shall specifically name the child to be taken into custody, state the time and date issued, the place where the child is to be taken, if known at that time, and the name of the person or persons authorized to take the child into custody. The order shall be signed by the judge or judicial officer.

An emergency custody order may be transmitted by the judge via telephone, computer, or fax, if the judge cannot be present on the Reservation.

20.04.120 Emergency Custody Orders – Service and Duration

An emergency custody order must be executed within 24 hours from the time the judge issues it. A child taken into custody under such an order may be held until the conclusion of the First Hearing or as ordered by the Court.

FIRST HEARING

20.04.130 Request for First Hearing

A person or agency who takes emergency custody of a child shall immediately file, or cause to be filed, a request for a First Hearing with the Court. The request shall include:

a) The name, date of birth, permanent address, and tribal status of the child and his or her parent(s), custodian(s), or guardians(s);

b) The facts establishing the Court's jurisdiction;

c) A statement of the facts which support the allegation that the child is in need of care; and

d) The location of the child and the time taken into custody. The location of the child does not have to be shared with the parent(s) if it would endanger the child.

20.04.140 First Hearing – Time, Notice

Within three (3) working days of taking a child into emergency custody, a hearing shall be convened by the Court, unless a judge is not available. In that case, the hearing shall take place as soon as a judge is available. Social Services is responsible for letting the Court Clerk know as early as possible who the parties are, so notice of the hearing can be given. If the parent(s), custodian, or guardian does not appear at the hearing, the Court may order a recess to try to find him or her.

20.04.150 First Hearing – Findings to be Made by the Court

The Court shall make the following determination at the First Hearing:

a) The tribal status of the child;

b) Whether there is probable cause to believe the child is in need of care;

c) The best interest of the child and the Tribe with regard to any action to be taken;

d) Whether out-of-home placement shall be continued for the protection of the child or if the child can safely be returned to the home;

e) Whether interim orders for the protection of the child and/or the family should be made while further proceedings are being considered. The Court may issue restraining orders; evaluation and treatment (including involuntary residential treatment) of alcohol, Marijuana, and other forms of substance abuse, mental illness, and emotional disturbance; parenting classes; mandatory school attendance; visitation orders; and other service or activities for the benefit of the child and his or her family. The Court may make a particular placement conditional on compliance with any of its orders;

f) Whether the child shall be ordered to be a ward of the Court to protect the child and to protect the Court's jurisdiction over the child; and

g) The parties shall be ordered to keep the Court informed as to any changes in their whereabouts and mailing addresses.

20.04.160 Placement Preferences for Out of Home Placement

If a child is placed out-of-home, the following placement preferences shall be observed, or ordered:

a) With a member of the child's immediate and/or extended family;

b) With a member of the child's tribe;

c) With a person from another tribe; or

d) In emergency placements, any other safe place.

Placement of a child with anyone who is not a member of the Shoalwater Bay Indian Tribe or who does not reside on the Shoalwater Bay Reservation shall be contingent on the person's written agreement to accept the jurisdiction of the Shoalwater Bay Tribal Court and to cooperate fully with tribal law enforcement and the Child Protection Team/Social Services.

20.04.170 Scheduling a Fact Finding Hearing at First Hearing

If it appears that a Petition for Fact Finding will soon be filed, based on the findings at the First Hearing, the Court shall set a time and date for a Fact Finding Hearing. Written notice of the hearing shall be provided to any persons party to the case who were not present at the First Hearing.

FACT FINDING HEARINGS

20.04.180 Purpose

The Court shall conduct a Fact Finding Hearing to determine whether a child is in need of care.

20.04.190 Contents and Filing of the Petition

A Petition for Fact Finding Hearing shall be filed by Social Services or other person authorized by the Tribe to file the petition and shall include:

a) The name, date of birth, permanent address, and tribal status of the child and his or her parent, custodian, or guardian;

b) The facts establishing the Court's jurisdiction;

c) A detailed statement of the facts and reasons which support the allegation that the child is in need of care. If a request for a First Hearing was filed, it may be incorporated in this petition; and

d) The location of the child and the time taken into custody. The location of the child does not have to be disclosed if it would endanger the child.

20.04.200 Time and Notice of Hearing

The Court shall set the date for the hearing to take place within 60 days of the date the petition was filed. The Court Clerk shall provide notices of the hearing to all parties at least five (5) working days before the hearing. The notice shall include the date, time and place of the hearing along with a copy of the petition. The Social Services Department is responsible for letting the Court Clerk know as early as possible whom the parties are so timely notice of the hearing can be given.

20.04.210 Evidence and Burden of Proof

The Court may hear evidence which is relevant to the case and which is reasonably reliable. The Tribe has the burden of proving that a child is in need of care by clear and convincing evidence.

20.04.220 Agreed Order

The parties to a Fact Finding Hearing may agree to a proposed order which resolves some or all of the issues of the case. Before deciding whether to approve the Agreed Order, the judge shall hold an in-chambers ex parte discussion with the parent(s), custodian, or guardian to:

a) Explain the proposed Agreed Order in detail and the consequences of the person's failure to comply with agreed terms;

b) Assure that the person's consent to the proposed order is not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person;

c) Explain the person's right to a spokesperson/counsel, at his or her own expense;

d) Explain that the Tribe has the burden of proving the allegations in the petition and that the person does not have to agree to the proposed order; and

e) Explain that once the person agrees to the proposed order and it is signed and entered by the Court, it will be too late for the person to change his or her mind.

The in-chambers conversation need not be recorded. If the parent wants a friend, family member, or other people to be present, the judge shall allow it

after first speaking alone with him or her. If the Court finds that any consent was the result of fraud or duress, the Agreed Order shall be vacated.

FAMILY PROTECTION PLAN

20.04.230 Suggested Family Protection Plan

The Social Services Department shall prepare or cause to be prepared a written plan describing all reasonable and appropriate alternatives for caring for the child and assisting his or her family. It shall explain why the plan is necessary, and its benefits to the child and the family. It shall fully explain any recommendations for out-of-home placement of the child. The professional opinions of all persons consulted shall be included. The Social Services Department shall file the report with the Court and provide copies to all parties at least ten (10) days before any hearing on the Family Protection Plan.

20.04.240 Other Suggested Plans

Any person, who is involved with a child in need of care case, may prepare his or her recommendations to the Court, in the form of a Family Protection Plan. Copies shall be provided to all parties prior to any hearing on the Plan.

20.04.250 Hearing to Decide the Family Protection Plan

A hearing shall be held to decide what Plan will best meet the needs of the child and assist the child's family. This hearing may take place right at the end of the Fact Finding Hearing or may take place up to sixty (60) days from the date of the Fact Finding Hearing. The Court shall determine the scheduling and shall cause Notice of Hearing to be served on all parties.

The Court shall hear testimony and consider all Family Protection Plans submitted. All parties shall be given a chance to contest the facts and conclusions presented in each Plan.

20.04.260 Court Ordered Family Protection Plan (Disposition)

If a child is in need of care, the Court shall order a Family Protection Plan for his or her protection and well-being. The Plan shall either allow the child to remain with his or her parent, guardian, or custodian or order an out-of-home placement, consistent with the placement preferences in Section 20.04.190. The Court may make any placement conditional on compliance with its orders.

The Court shall make any other orders necessary for the protection and well-being of the child and family. Such orders may include but are not limited to: restraining orders; evaluation and treatment (including involuntary residential treatment and drug testing) of alcohol, Marijuana, and other forms of substance

abuse, mental illness, and emotional disturbance; parenting classes; mandatory school attendance; visitation orders; and other services or activities for the benefit of the child and his or her family.

Failure to comply with a Family Protection Plan may be punished by contempt of court under **Title 1 Court Procedures** of the Shoalwater Bay Code of Laws.

The Family Protection Plan shall include protection of an unborn or nursing child whose mother is using alcohol, Marijuana, or other drugs, to an extent that the fetus or baby may be endangered, and an unborn child whose mother is not receiving adequate prenatal care [Section 20.04.010.]

20.04.270 Other Suggested Plans

The Court shall conduct a hearing to review its Plan at least once every six (6) months, or earlier upon motion of any party. The Court shall review whether the parties are complying with the order and shall consider whether modification is necessary to protect the child and strengthen the family.

Chapter 20.05 Guardianship

20.05.010 Purpose

This chapter provides a process for empowering a person who is not a child's parent to perform the duties of a primary caregiver, without terminating the parental rights of the parent(s). It has long been the custom of the Shoalwater Bay Tribe that a child may be cared for by persons other than a parent, without excluding the parent from the child's life. It is intended that this chapter be applied with flexibility for a variety of family situations and problems.

For example, guardianship may be used to give a child's grandparents authority to enroll a child in school and obtain medical care for him or her. A young mother may wish to have a guardian appointed for her child rather than give a child up for adoption. Foster families may petition for guardianship if it appears the child will not be returning to the parent in the near future. A guardianship may be desirable if a child's parents are deceased, have abandoned the child, or are no longer able or available to care for the child. Another jurisdiction may have terminated the parental rights of the parents but have not arranged for or completed an adoption. This list is by way of example only and is not intended to limit the uses of guardianship.

20.05.020 Petition for Guardianship – Who May File

Any person at least eighteen (18) years old may file a petition with the Court requesting that he or she be appointed as a guardian of a child.

20.05.030 Petition - Contents

A Petition for Appointment of a Guardian shall include:

a) The name, birthdate, residence, and tribal status of the child who is the subject of the petition;

b) The name, birthdate, residence, and tribal status, if known, of the child's parent(s) and of the petitioner(s);

c) If the child is residing with someone other than a parent, the location and length of time at that location; and

d) A statement by the petitioner(s) of the facts and reasons supporting his or her request to be appointed as a guardian.

20.05.040 Setting the Hearing

When the Court receives the petition it shall set a hearing date, which shall not be more than sixty (60) days after the Court received the petition, unless continued for good cause.

20.05.050 Notice of Hearing

Notice of Hearing shall be given at least twenty (20) days before the hearing. The notice shall include the date, time, and place of the hearing and a copy of the petition. The notice shall be served on:

a) The petitioner(s);

b) The child's parent(s), guardian, or custodian;

c) The Presenting Officer, Social Services, or other designated representatives of the Shoalwater Bay Tribe;

d) The Child Protection Team;

e) Any person the Court deems necessary for proper adjudication. The Court may discover that additional persons should be notified after the guardianship proceedings are in progress. The Court may continue the proceedings in order to give those persons notice;

f) Any person the parties or the Child Protection Team believe necessary for the hearing; and

g) If the child is not enrolled in the Shoalwater Bay Tribe, any tribe the child is enrolled in or may be eligible for enrollment in shall be notified.

20.05.060 Guardianship Report - Preparation

The petitioner(s) and the Child Protection Team shall work together to arrange to have a guardianship report prepared by the Tribe's Social Services Department, or by another qualified professional. The person(s) preparing the report shall conduct a complete home study and shall consult with the child's parent(s); all health, education, and Social Service personnel who have had prior professional contacts with the child and with the petitioner(s) to determine whether appointment of a guardian would be in the best interest of the child. Evidence of alcohol and drug abuse shall be included in the report. A Criminal Background Check of the petitioner(s) shall be requested from state and tribal law enforcement authorities. The guardianship report shall be in writing and contain the professional opinions of all persons consulted.

20.05.070 Guardianship Report - Services

Petitioner(s) shall make sure the guardianship report is filed with the Court at least fifteen (15) days before the hearing. The Court Clerk shall provide copies of the report to all parties at least ten (10) days before the hearing.

20.05.080 Additional Reports

Any party may file with the Court a report which shall include his or her recommendations regarding the guardianship. The party shall provide copies of the report to the Court Clerk prior to the hearing.

20.05.090 Guardianship Hearing - Conduct

The Court shall hear testimony to determine whether guardianship is in the best interest of the child and the tribal community. The Court shall consider all guardianship reports submitted for review. All parties shall be given the opportunity to contest the factual contents and conclusions of the guardianship reports.

20.05.100 Grounds for Appointing a Guardian and Burden of Proof

The Court may appoint a guardian when:

a) The parent(s) of the child has/have consented in writing to the guardianship; or the parent(s) is/are deceased; or the child is in need of care as defined under this code; and

b) The following conditions have been proved, by clear and convincing evidence:

i) Appointment of a guardian is in the best interest of the child and the tribal community; and

ii) That the petitioner(s) can provide appropriate and adequate parental care for the child.

20.05.110 Placement Preference

The Court shall be guided by the following placement preferences in appointing a guardian. The Court may deny a petitioner's request to be appointed as a guardian if the petitioner does not fall into one of these categories:

a) A member of the child's immediate or extended family;

b) A member of the Shoalwater Bay Tribe or of the Shoalwater Bay Tribal community which shall include persons living on or near the Shoalwater Bay Indian Reservation who participate in tribal activities and are considered part of the tribal community, based on evidence presented at the hearing;

c) A member of another Indian Tribe; or

d) If the above criteria cannot be met, for good cause shown, placement may be made with any person who has knowledge of and a desire to encourage the child's tribal affiliation and special needs.

20.05.120 Enrollment Prior to Appointment of Guardian

If a child is not enrolled but may be eligible for enrollment or membership in an Indian Tribe, the Enrollment Officer shall assist in making application for membership or enrollment of the child.

20.05.130 Order of Appointment – Powers of Guardian

If the Court orders the appointment of a guardian, the order shall declare the child to be a ward of the Court. Unless limited by the Court, the duties and powers assigned to a guardian shall be those of a parent whose parental rights have not been terminated or suspended, toward his or her child, including but not limited to:

a) The guardian shall assure that the child receives adequate food, clothing, health and other professional care, shelter, and education, as needed and appropriate;

b) A guardian is morally responsible for acts of the child. His or her legal liability for acts of the child shall be limited to actual damage caused by the child while the child is living with the guardians (e.g. the guardian is not responsible for the child's acts if the child has run away);

c) A guardian may bring lawsuits on behalf of the child and otherwise represent the child in legal proceedings if expressly authorized to do so by the Court, on a case by case basis;

d) The guardian has a duty to provide timely informed consent to necessary medical procedures;

e) The guardian cannot enroll a child who is eligible for enrollment in the Shoalwater Bay Tribe, in another tribe without first obtaining court approval;

f) The guardianship does not affect the child's inheritance rights; and

g) A guardian may petition the Court for authority to take any action which benefits the child about which he is uncertain of his authority. The Court may grant such authority after such notice and hearing, if any, as the Court may direct, if such appears to be consistent with the interests of the child.

NOTICE TO THE TRIBAL COMMUNITY: Guardianship does not affect inheritance. If you are guardians and would like to treat the ward like your own family, you should make a will to include that person.

20.05.140 Appointment of Guardian for a Child's Property

The Court may appoint a person or financial institution to be the guardian of a child's property. This may be a different person than the guardian who provides direct care to the child.

20.05.150 Existing Trusts

If the child's property is subject to a trust (for example, where a parent has died leaving property to a child in a trust set up in the will), the guardian is bound by the trust provisions. The Court has the power to review any trust in connection with appointment of a guardian and to impose any protections necessary to

enforce the trust, to insure that the guardian fully and regularly accounts for trust funds, and to see that the funds are properly managed.

20.05.160 Removal of Guardian

The Court has the power to remove a guardian and appoint a replacement guardian whenever necessary for the child's benefit.

20.05.170 Creating a Tribal Trust

If a trust has not already been established to administer a child's property, the Court may create a trust for the benefit of a child and appoint the Shoalwater Bay Tribe as trustee of the funds. The following rules apply to such trusts:

a) The Tribe shall place the trust funds in a separate, safe, interest bearing account such as those used by the Tribe for its other funds. The account shall be a "blocked account" which allows disbursement only upon order of the Shoalwater Bay Tribal Court. The account shall be indentified in the name of the Shoalwater Bay Tribe as trustee for the named child. If there is more than one child, the accounts may be set up separately or together, at the Court's discretion. The funds shall at all times remain in the exclusive jurisdiction of the Shoalwater Bay Tribe.

b) The purpose of the trust shall be to preserve the principal and interest until the child is eligible to receive his or her share of the funds at twenty-one (21) years of age.

c) The child's guardians, appointed under Section 20.05.130 shall be financially responsible for the child's needs and for arranging all available benefits and services for which the child is eligible. No portion of the trust funds may be disbursed prior to the child's twenty-first birthday except upon a showing of extreme hardship to the child or upon a showing that the child has registered for classes at an institution for higher education and there are insufficient resources available to pay for such education.

   The Tribe or the guardian may petition the Court in such a case to request a hearing. If the Court finds that extreme hardship to the child exists or a higher education need exists, and no other resources are available to meet the child's needs, it may order disbursement of a specified amount of funds for a specified purpose. The Court shall require a written accounting to be filed with the Court documenting all expenditures. If more than one disbursement will be necessary (e.g. monthly payments) the Court may so order.

The Court may appoint a trustee to disburse higher education funds on behalf of the student for tuition, books, supplies, and living expenses. The trustee shall insure the amount of financial assistance matches the credit hours registered for and the number of credit hours actually earned at the end of each term. The student shall provide a report of grades to the trustee each term. If the student's cumulative grade point average is less that 2.0, the trustee shall request the Court to schedule a hearing for the student to show cause why his or her grades are below a 2.0 average. The trustee shall provide an accounting to the Court on a quarterly or semester basis, depending on the school's calendar.

d) The Tribe shall provide the Court with an annual accounting of the trust and an accounting prior to and after any disbursement, including a final distribution to a child upon reaching age twenty-one (21).

e) A child shall, on or after his or her 21st birthday, petition the Court to order distribution of his or her funds free of trust. The child shall supply the Court with valid photo identification.

f) If a child dies before reaching age twenty-one (21), his or her trust funds shall be paid to his or her estate.

g) All funds, while held in trust under this section, are exempt from levy, execution, forfeiture, garnishment, seizure, lien, claim, bankruptcy, or any encumbrance whatsoever; they cannot be assigned to another or used as collateral or security. Any agreement purporting to use or obligate funds in any of the foregoing ways is void.

h) The Tribe shall serve as Trustee without compensation. Reasonable bank fees shall be payable from the trust funds.

i) The Tribe may petition the Court at any time to clarify its obligations under this section.

j) All records and files maintained in connection with this section shall be confidential.

20.05.180 Change of Address – Limits, Notice

The Court may order placement of a child with guardians who live off of the Shoalwater Bay Indian Reservation if it is in the best interest of the child and the tribal community. However, the guardian shall not move outside a seventy-five (75) mile radius of the Shoalwater Bay Reservation boundaries without prior court approval upon notice and hearing. Guardians shall immediately notify the Court, in writing, of any change of address.

20.05.190 Visitation

The Court may order visitation between the child and parent(s), grandparents, other immediate and extended family members and any other person, in the best interest of the child and of the tribal community. The Court may specify in the order that supervision is required or may impose other requirements to protect the child.

20.05.200 Court Review

The Court shall state in all guardianship orders whether review hearings shall be required and, if so, the frequency of such hearings.

20.05.210 Termination of Guardianship

Generally, a guardianship shall terminate upon the death, marriage, adoption, or eighteenth (18th) birthday of the child (unless continued by the Court as an adult guardianship) or upon order of the Court. Guardians may petition the Court to be released from legal responsibility for the acts of a ward whom is not residing with the guardians or is otherwise out of the guardian's physical or emotional control. Guardians of tribal trusts shall serve until all trust funds have been distributed under the terms of the trust.

Chapter 20.06 Termination of Parental Rights

20.06.010 Purpose

This chapter addresses both voluntary relinquishment of a parent's rights and involuntary termination of parental rights. It is currently the policy of the Tribe to view involuntary termination of parental rights as a last resort. The terms "relinquishment" and "termination" have the same legal effect under this code.

20.06.020 Petition for Termination of Parental Rights – Who May File

Any parent may file a petition for voluntary relinquishment of his/her parental rights. Only a representative of the Shoalwater Bay Tribe may file a petition for involuntary termination of a parent's rights.

20.06.030 Petition - Contents

A Petition for Termination of a Parent's Rights shall include:

a) The name, birthdate, residence, and tribal status of the child who is the subject of the petition;

b) The name, birthdate, residence, and tribal status, if known, of the child's parent(s), guardian, or custodian;

c) If the child is residing with someone other than a parent, the location and length of time at that location; and

d) A statement by the petitioner (whether the petitioner is the Tribe or a parent) of the facts and reasons supporting the request.

20.06.040 Setting the Hearing

When the Court receives the petition it shall set a hearing date, which shall not be more than sixty (60) days after the Court received the petition, unless continued for good cause.

20.06.050 Notice of Hearing

Notice of Hearing shall be given at least twenty (20) days before the hearing. The notice shall include the date, time, and place of the hearing and a copy of the petition. The notice shall be served on:

a) The petitioner;

b) The child's parents;

c) The Presenting Officer, Social Services, or other designated representative of the Shoalwater Bay Tribe;

d) The Child Protection Team;

e) Any person the Court deems necessary for proper adjudication. The Court may discover that additional persons should be notified after the proceedings are in progress. The Court may continue the proceedings in order to give those persons notice; and

f) Any person the parties or the Social Services Department believes necessary for the hearing;

g) If the child is not enrolled in the Shoalwater Bay Tribe, any tribe the child is enrolled in or may be eligible for enrollment shall be notified.

20.06.060 Pre-Termination Report - Preparation

The petitioner(s) and the Child Protection Team shall work together to arrange to have a pre-termination report prepared by the Tribe's Social Services

department, or by another qualified professional. The person(s) preparing the report shall conduct a complete home study and shall consult with the child's parent(s); all health, education, and Social Service personnel who have had prior professional contacts with the child and with the petitioner(s) to determine whether termination of the parent's rights would be in the best interest of the child. The report shall be in writing and contain the professional opinions of all persons consulted. The Court may waive the requirement of a pre-termination report in cases where a parent is consenting, provided that all requirements for a proper consent under this chapter have been met.

20.06.070 Pre-Termination Report - Service

Petitioner(s) shall file the pre-termination report with the court at least fifteen (15) days before the hearing. The Court Clerk shall provide copies of the report to all parties at least ten (10) days before the hearing.

20.06.080 Additional Reports

Any party may file with the Court a report which shall include his or her recommendations regarding the proceeding. The party shall provide copies of the report to the Court Clerk prior to the hearing.

20.06.090 Termination Hearing - Conduct

The Court shall consider all reports submitted for review. All parties shall be given the opportunity to testify and to contest the factual contents and conclusions of the pre-termination report(s).

20.06.100 Grounds for Involuntary Termination and Burden of Proof

In cases of involuntary termination, the Tribe must prove by clear and convincing evidence of the following:

a) That the parent has:

   i) Abused the child physically or sexually,

   ii) Abandoned the child,

   iii) Chronically neglected the child, or has

   iv) Chronically emotionally maltreated the child; and

b) That termination of the parent's rights and adoption are in the best interest of the child and of the tribal community; and

c) That the Tribe has offered or helped arrange for appropriate resources to help the parent care appropriately for the child; and

d) That it is unlikely that the parent will be able to care appropriately for the child. The Court shall be guided in making a ruling on this subsection by the factors set forth in **Appendix A "*Predicting Parenting Capacity*"** which is incorporated herein.

"Abandonment" is a term that does not lend itself to a precise meaning. In general terms, abandonment exists 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 assume his or her parental role for a period exceeding two years. The Court, in its discretion, may find that abandonment has occurred in less than two years depending on the age and other needs of the child.

20.06.110 Voluntary Relinquishment

Voluntary relinquishment of a parent's rights to a child is not valid unless:

a) The parent has received counseling from an appropriate professional who has explained the consequences of relinquishing his or her rights, has explored all available services to help the parent care for the child (such as parenting classes and substance abuse treatment), and has explored alternatives, such as guardianships;

b) The parent orally explains his or her understanding of the meaning, of relinquishment of parental rights to the judge and the judge certifies that the terms and consequences of the relinquishment were fully explained and were fully understood by the parent; and

c) The relinquishment was given no sooner than sixty (60) days after the birth of the child. This does not mean the child cannot be placed with the prospective adoptive parents or other caregiver during the 60 day period.

20.06.120 Enrollment Prior to Termination

If a child is not enrolled but may be eligible for membership in an Indian Tribe, the Enrollment Officer shall assist in making application for membership or enrollment of the child.

20.06.130 Disposition

If parental rights are terminated by the Court, adoption or guardianship proceedings may proceed or the Court may make a disposition consistent with

the child in need of care provisions of this code. If parental rights are not terminated, but sufficient grounds for finding the child is in need of care have been proved to the Court, the Court may make a disposition consistent with the child in need of care or guardianship provisions of this code.

Chapter 20.07 Adoption

20.07.010 Petition for Adoption – Who May File

Any person at least eighteen (18) years old may file a petition with the Court to adopt a child. If the petitioner is married, his or her spouse must also be at least eighteen (18) years old and must sign the petition, unless the spouse's whereabouts is unknown or unless waived by the Court.

20.07.020 Petition - Contents

The adoption petition shall include:

a) The name, birthdate, residence, and tribal status of the child who is the subject of the petition;

b) The name, birthdate, place and duration of residence, and tribal status of the petitioner(s);

c) The name, birthdate, residence, and tribal status of the parent(s);

d) The relationship, if any, of the petitioner(s) to the child;

e) The names and addresses, if known, of all persons whose consent is required and proof of such consent;

f) A description of all previous court proceedings involving the care or custody of the child to be adopted and the results of these proceedings along with copies of all court orders including orders terminating a parent's rights to the child;

g) The reasons the child is available for adoption and why the petitioner(s) desires to adopt the child; and

h) Any request the petitioner(s) has for changing the child's name.

20.07.030 Availability for Adoption

A child may be adopted only if he or she has no parents by reason of death or by voluntary relinquishment or involuntary termination of the parent child

relationship. The Court may conduct a hearing as provided under Chapter 20.06 of this code, prior to or together with an adoption hearing.

20.07.040 Setting the Hearing

When the Court receives the Petition for Adoption it shall set a hearing date, which shall not be more than sixty (60) days after the Court received the petition, unless continued for good cause shown.

20.07.050 Notice of Hearing

Notice of Hearing shall be given by the Court Clerk at least twenty (20) days before the hearing. The notice shall include the date, time, and place of the hearing and a copy of the adoption petition. The notice shall be served on:

a) The petitioner(s);

b) The Social Services Department or other designated representative of the Shoalwater Bay Tribe;

c) The Child Protection Team;

d) Any person who was listed in the petition whose consent to the adoption is necessary;

e) Any person the Court deems necessary for proper adjudication. The Court may discover that additional persons should be notified after the adoption proceedings are in progress. The Court may continue the proceedings in order to give those persons notice;

f) Any person the parties or Social Services believe are necessary for the hearing; and

g) If the child is not enrolled in the Shoalwater Bay Tribe, any tribe the child is enrolled in or may be eligible for enrollment in shall be notified.

20.07.060 Adoption Report - Preparation

The petitioner(s) and the Child Protection Team shall work together to arrange to have a pre-adoption report prepared by the Tribe's Social Services Department or by another qualified professional. The adoption report shall be in writing and contain the professional opinions of all persons consulted. The person(s) preparing the report shall conduct a complete home study including all information concerning:

a) The physical and mental condition of the child, petitioner(s) and persons' living in the petitioner's home;

b) The circumstances of the voluntary or involuntary termination of the parent's rights to the child or of the parent's death;

c) The home environment, family life, access to health services, and resources of the petitioner(s);

d) The child's and petitioner's cultural heritage and tribal status;

e) The marital status of the petitioner(s);

f) The names and ages of the petitioner's children and of any other persons residing with the petitioner(s);

g) Information from health, education, and social service personnel who have had prior professional contacts with the child and petitioner(s);

h) A Criminal Background Check of the petitioner(s) shall be requested from state and tribal law enforcement authorities;

i) Any evidence of alcohol and drug abuse in petitioner's household;

j) Any other facts and circumstances relating to whether or not the adoption should be granted.

20.07.070 Adoption Report - Service

The person preparing the pre-adoption report shall file it with the Court at least fifteen (15) days before the hearing. The Court Clerk shall provide copies of the report to all parties at least ten (10) days before the hearing.

20.07.080 Additional Reports

Any party may file with the Court a report which shall include his or her recommendations regarding the adoption. The party shall provide copies of the report to the Court Clerk prior to the hearing.

20.07.090 Adoption Hearing - Conduct

The Court shall consider all adoption reports submitted for review. All parties shall be given the opportunity to testify.

20.07.100 Grounds for Entering Decree of Adoption

The Court may enter a decree of adoption if it finds that:

a) Adoption is in the best interest of the child and the tribal community; and

b) That the petitioner(s) can provide appropriate and adequate parental care for the child;

20.07.110 Placement Preference

The Court shall be guided by the following placement preferences in deciding whether an adoption will be granted. The Court may deny the adoption if the petitioner(s) does not fall into one of these categories:

a) A member of the child's immediate and extended family;

b) A member of the Shoalwater Bay Tribe or of the Shoalwater Bay tribal community as defined in Section 20.01.020, based on evidence presented at the hearing;

c) A member of another Indian Tribe; or

d) If the above criteria cannot be met, for good cause shown, placement may be made with any person who has knowledge of and a desire to encourage the child's tribal affiliation and special needs.

20.07.120 Enrollment Prior to Entry of Adoption Decree

If a child may be eligible for membership in an Indian Tribe, the Enrollment Officer shall assist in making application for membership or enrollment of the child.

20.07.130 Denial of Adoption Petition

If the adoption petition is denied, the Court shall specifically state the reasons for the denial and shall designate who shall have custody of the child.

20.07.140 Decree of Adoption

If the Court grants the petition for adoption, the Court shall enter Findings of Fact and Conclusions of Law and a separate Decree of Adoption. The Decree shall include:

a) A statement that the child is available for adoption and any order the Court may make concerning recognition of the consents or orders terminating parental rights filed in the case;

b) A statement that the child is, for all intents and purposes, the child, legal heir, and lawful issue of the petitioner(s);

c) The marital status of the petitioner(s);

d) The full name of the child upon adoption; and full name prior to adoption;

e) Orders directing the Court Clerk to forward a certified copy of the decree to the appropriate **Bureau of Vital Statistics** for purposes of obtaining a corrected birth certificate when the adoption becomes permanent in one year; and

f) A statement that the records of the proceeding shall remain sealed unless otherwise ordered by the Court or as provided under Section 20.07.170.

20.07.150 Effect of Decree of Adoption

A decree of adoption has the following effect: it creates the relationship between the adopted child and the petitioner(s) and all relatives of the petitioner(s) that would have existed if the child were a legitimate blood descendant of the petitioner(s). This relationship shall be created for all purposes including inheritance and applicability of statutes, documents and instruments, whether executed before or after entry of the adoption decree, that do not expressly exclude an adopted person by their terms. The decree does not override any tribal enrollment laws or requirements.

20.07.160 Visitation

Adoptive parents shall be encouraged to help the child maintain positive relationships with the biological family. However, the adoptive parents shall have the exclusive right and power to decide the terms, if any, of visitation by any person with the child, *except* adoptive parents who live off-reservation may be required by Court to allow and encourage the child to maintain his or her tribal ties to the Shoalwater Bay Tribe or elsewhere. Social Services shall make recommendations to the Court in such cases.

20.07.170 Adoption Records

All records, reports, proceedings, and orders in adoption cases are confidential and shall not be available for release or inspection except:

a) The **Bureau of Indian Affairs** may have access to such information as is necessary to protect inheritance rights or enrollment status of the adopted child (and his or her descendants);

b) A copy of the decree of adoption, but not the Findings of Fact and Conclusions of Law, may be given to a **Bureau of Vital Statistics** as provided in this chapter; and

c) An adopted child may petition the Court, upon reaching eighteen (18) years of age, for release of specifically requested information. The petition should state which information is requested and the reason each piece of information is requested. The Court may request that Social Services prepare a report on the ramifications of releasing the requested information to the petitioner. The Court may also request the assistance of Social Services in reuniting adopted children with members of the biological family. If a parent objects to his or her whereabouts being disclosed to the child, the parent's wishes shall be given substantial weight in the Court's decision.

Chapter 20.08 Emancipation

20.08.010 Purpose

The purpose of this chapter is to provide a process for young people to petition the Tribal Court for the removal of the legal disabilities of minority. Emancipation shall be used only in exceptional cases where it will result in substantial benefits for the youth.

20.08.020 Who May Petition

Any youth may petition the Tribal Court for an Order of Emancipation provided the following requirements are met:

a) The youth is a member of the Shoalwater Bay Tribe; or the youth resides or is domiciled within the jurisdiction of the Shoalwater Bay Tribe; and

b) The youth is living separate and apart from his or her parents, guardian or custodian; or the youth has special needs; or there exist special circumstances necessitating emancipation; and

c) The youth is capable of arranging for his or her own support and the management of his or her own financial affairs.

20.08.030 Youth May File on Own Behalf

A youth may file a Petition for Emancipation on his or her own behalf.

20.08.040 Contents of the Petition

The Petition for Emancipation shall include:

a) The name, date of birth, address and tribal status of the youth;

b) The name, date of birth, address and tribal status of each parent whether living or deceased;

c) The name and address of the youth's custodian or guardian, if any;

d) The reasons emancipation would be in the best interests of the youth; and

e) The purposes for which emancipation is sought.

20.08.050 Consent

The youth must obtain the consent of each living parent, guardian, or other custodian of the youth who has control of the youth's person or property. If the person whose consent is required is unavailable or his or her whereabouts is unknown, or if a parent, guardian, or custodian unreasonably withholds consent, the Tribal Court, acting in the best interests of the youth, may waive the consent requirement for that particular parent, guardian, or custodian.

20.08.060 Guardian Ad Litem

The Tribal Court may appoint a *guardian ad litem* to represent the interest of the youth in an emancipation proceeding.

20.08.070 Notice

Notice of the date, time, and place of the emancipation hearing shall be given by the Court Clerk to the parties, to Social Services, and to those from whom consent is required under Section 20.08.050, at least ten (10) days before the hearing.

20.08.080 Recommendation of the Social Services

Social Services may file a recommendation with the Court on any petition for emancipation. A copy of the recommendation shall be provided to the youth and his or her parents, guardians, or custodians.

20.08.090 Notice of Prior or Pending Court Actions

Social Services shall notify the Court if he or she is aware of any court orders or legal actions, in any jurisdiction, involving the youth and which may be relevant to the emancipation proceedings (such as juvenile criminal proceedings, sentencing orders, parole, or dependency proceedings). No emancipation shall be ordered if it would circumvent a valid criminal sentence ordered by any court of competent jurisdiction.

20.08.100 Applicable Standard

The Tribal Court may emancipate a youth if it is in his or her best interest and will result in a substantial benefit for the youth. Emancipation may be ordered for general or limited purposes, and the Order of Emancipation shall specifically state the extent of the emancipation. A copy of the order shall be provided to the youth; his or her parents, guardians, and custodians and to Social Services.

20.08.110 Rights of an Emancipated Youth

Except for limits placed by the Court and specific constitutional and statutory age limits such as voting and use of alcoholic beverages, a youth who has been emancipated has the powers and capacity of an adult, including but not limited to the right to control himself, to be domiciled where he or she wishes, to receive and control his or her earnings, to sue and be sued, and to enter into contracts.

Chapter 20.09 Parenthood, Custody, Child Support

20.09.010 Parenthood Proceedings - Generally

The parenthood proceedings in this chapter may be used in a variety of circumstances. *Establishment of parenthood by court order* is generally a contested process or it may be used if an alleged parent is deceased or otherwise unavailable.

A parent is not entitled to treatment as a parent under this code unless his parenthood is legally established through DNA testing as to paternity.

20.09.020 Acknowledging Parenthood by Affidavit is not allowed

20.09.030 Duty to Support Children

Parents have the primary responsibility for providing financial support for the care of their children until they are eighteen (18) years of age or emancipated under the provisions of this code, regardless of where the children are living and regardless of the marital status of the parents. The Tribal Court has the

authority to order either or both parents to provide financial support for the care of their child(ren). A parent or a *guardian ad litem* may file a petition on behalf of a child requesting the Tribal Court to order payment of such financial support. The Court shall cause a hearing to be scheduled within sixty (60) days and shall direct notices to be served on all parties. The Tribal Court is hereby vested with broad power to structure a Child Support Order which will provide adequately for the care of the child and, if there is more than one parent, will fairly distribute the burden of the financial support between the parents. The Court shall consider methods of providing financial support between the parents. The Court shall consider methods of providing financial support such as purchase of school clothes and other forms of in-kind support which can strengthen the parent-child bond, especially if a parent cannot or does not live with a child the majority of the time. The Court may order a parent to receive financial support from the other parent, for the benefit of a child, and to give the Court an accounting of how the financial support was spent.

20.09.040 Paternity Established by State Court

Paternity established through State Court may be recognized by the Tribe's Court.

20.09.050 Custody of Children - Generally

The Shoalwater Bay Tribal Court has the authority to make orders concerning the custody of children who are under the age of eighteen (18) years in cases of divorce and cases of separation of married or unmarried parents. Separation for purposes of this section shall mean parents who live apart from each other.

20.09.060 Petition for Custody of Child

A parent may file a petition with the Court requesting that he or she be given legal custody of a child. The petition shall state:

a) The name, birthdate, residence, and tribal status of the child who is the subject of the petition;

b) The name, birthdate, residence, and tribal status, if known, of the child's other parent and of the petitioner;

c) A statement by the petitioner of the facts and reasons supporting his or her request to be awarded custody.

20.09.070 Setting the Hearing – Interim Order that Child is A Ward of the Court

When the Court receives the petition it shall set a hearing date, which shall not be more than sixty (60) days after the Court received the petition, unless continued for good cause. The Court shall enter an interim order upon receiving the petition that the child is a ward of the Tribal Court.

20.09.080 Notice of Hearing

Notice of Hearing shall be given at least twenty (20) days before the hearing. The notice shall include the date, time, and place of the hearing and a copy of the petition. The notice shall be served on:

a) The petitioner;

b) The child's other parent;

c) Tribal Social Services;

d) Any person the Court deems necessary for proper adjudication. The Court may discover that additional persons should be notified after the custody proceedings are in progress. The Court may continue the proceedings in order to give those persons notice; and

e) Any person the parties or Social Services believe necessary for the hearing.

20.09.090 Custody Report - Preparation

The petitioner and Social Services, or other qualified professional, shall work together to arrange to have a custody report prepared. The person(s) preparing the report shall conduct a complete home study and shall consult with the child's other parent; all health, education, and social service personnel who have had prior professional contacts with the child and with the petitioner to determine whether granting the petitioner's request for custody would be in the best interest of the child. Evidence of alcohol and drug abuse shall be included in the report. A check of the criminal records, if any, of the petitioner shall be requested from state and tribal law enforcement authorities. The custody report shall be in writing and contain the professional opinions of all persons consulted. The report shall also contain the wishes of the child, if any.

20.09.100 Custody Report - Service

The petitioner shall make sure the custody report is filed with the Court at least fifteen (15) days before the hearing. The Court Clerk shall provide copies of the report to all parties at least ten (10) days before the hearing.

20.09.110 Additional Reports

Any party may file with the Court a report which shall include his or her recommendations regarding custody. The party shall provide copies of the report to the Court Clerk prior to the hearing.

20.09.120 Custody Hearing - Conduct

The Court shall hear testimony to determine whether awarding custody to the petitioner is in the best interest of the child and the tribal community. The Court shall consider all reports submitted for review. All parties shall be given the opportunity to contest the factual contents and conclusions of the reports. The Court shall speak to the child alone, in chambers, to determine the wishes of the child.

20.09.130 Court Order on Custody

a) Grounds for Awarding Custody. The Court shall have broad discretion to fashion a custody order, including a joint custody arrangement that will provide the best care for a child. The Court must find, prior to any custody order, that the following conditions have been proved, by the greater weight of the evidence:

   i) Awarding custody to the party or parties is in the best interest of the child and the tribal community; and

   ii) The party or parties can provide appropriate and adequate parental care for the child.

b) Financial Support, Visitation, Family Protection Plan. As part of any child custody order, the Court may order financial support for the care of the child under Section 20.09.030; order visitation with the other parent or any extended family members; and shall make permanent the order that the child is a ward of the Court. If the Court has reason to believe, a child is in need of care as defined in this code, the Court may also order a family protection plan under Section 20.04.260 of this code.

c) Custody Outside the Shoalwater Bay Tribal Community. If the Court awards custody to a person who is not a member of the Shoalwater Bay

Tribal Community, the Court shall make such orders as are necessary to ensure that the child maintains his or her ties to the Tribe such as visitation with immediate and extended family and attending tribal gatherings.

Chapter 20.10 Divorce

20.10.010 Who May Commence Proceedings

Either or both parties to a marriage may initiate a proceeding which has as its object a dissolution of the marriage or declaration of invalidity of marriage.

20.10.020 How Commenced – Contents, Filing Fees

A proceeding for the Dissolution of a Marriage or Declaration of Invalidity of Marriage is commenced by the filing of a petition with the Court, along with a filing fee of fifty dollars ($50.00), stating the following:

a) The address (or last known) of each party;

b) The date and place of the marriage;

c) If the parties are separated, the date on which the separation occurred;

d) The names, ages, and addresses of any child dependent on either or both of the spouses, and whether the wife is pregnant;

e) The petitioner's requests and any agreement there may be between the parties as to the custody, visitation, and support of any children and maintenance of a spouse;

f) A statement specifying whether there is property of the parties to be disposed of;

g) The tribal affiliation of the parties and their children;

h) The relief sought (whether invalidity of marriage or dissolution) and a brief statement of the reasons. For a divorce, it is sufficient to state that the marriage is irretrievably broken.

20.10.030 Jurisdictional Requirements

The Shoalwater Bay Tribal Court shall have jurisdiction over proceedings under this chapter if either party to the marriage is an enrolled member of the Shoalwater Bay Indian Tribe.

20.10.040 Procedure

a) Serving the Petition and Summons/Respondent to File Answer. Upon filing a Petition for Divorce or Declaration of Invalidity, the petitioner shall cause a summons and a copy of the petition to be served on the other spouse (respondent). The summons shall be on a form available from the Court Clerk and shall direct the respondent to answer the petition in writing and to serve a copy of his or her answer on the Court within thirty (30) days after personal service of the summons or service by certified mail, or within sixty (60) days after service by publication. The summons shall state that if the respondent does not answer within those time periods the Court will grant the relief requested by the petitioner. If the respondent files an answer, the Court Clerk shall mail a copy to the petitioner.

b) Method of Service. The petitioner shall have a person over the age of eighteen (18) years serve the summons and a copy of the petition on the respondent personally, or by giving them to the respondent directly or by leaving them at the respondent's residence or place of employment with a person at least fourteen (14) years old who lives or works there. The process server shall promptly file with the Court Clerk a written statement describing where, when, and how delivery was made. If personal service cannot be made after reasonable efforts, the Court may allow another form of service such as service by certified mail with return receipt requested or publication.

c) Joint Petition. Both spouses may sign the petition and thereby waive the requirement of service of a summons and copy of the petition.

d) Child Custody Issues. When child custody is at issue in dissolution or declaration of invalidity cases, the following requirements of Chapter 20.09 shall be followed:

i) The petition shall include the information required in Section 20.09.060 (Petition for Custody of Child);

ii) The Court shall enter an interim order that the child(ren) is a ward of the Court under Section 20.09.070;

iii) Custody report requirements under Sections 20.09.080, 20.09.090, 20.09.100, 20.09.110, 20.09.120, and 20.09.130. The hearing on custody may be heard separately or with other issues, in the Court's discretion.

e) Hearings. All hearings under this chapter shall be closed. The Court shall schedule a hearing upon either party's motion for temporary orders and the Court Clerk shall issue notices of hearing to the parties. A final hearing shall be scheduled by the Court upon request of the petitioner(s) after the time for the answer has passed and a child custody report, if one is required, has been filed with the Court. The Court Clerk shall issue notices of hearing to the parties.

20.10.050 Invalidity of Marriage - Generally

a) A petition to have a marriage declared invalid may be sought by either or both parties, or the guardian of an incompetent spouse, for any cause specified in subsection (d) of this section.

b) If the validity of a marriage is denied or questioned at any time, either or both parties to the marriage may petition the Court for a judicial determination of the validity of the marriage.

c) In a proceeding to declare the invalidity of a marriage, the Court shall have authority to provide for maintenance, custody, visitation, support, and division of the property of the parties provided by this chapter.

d) A declaration that a marriage is invalid does not affect the parents duties with respect to their children.

20.10.060 Invalidity of Marriage – Finding of the Court

a) If the Court finds the marriage to be valid as of the date it was purportedly contracted and if it finds that:

i) The marriage should not have been contracted because of the age of one or both of the parties, lack of required parental or court approval;

ii) There is a prior undissolved marriage of one or both of the parties;

iii) A party lacked capacity to consent to the marriage, either because of mental incompetence or incapacitating substances;

iv) The parties are too closely related by blood;

v) There has been a loss of the physical relationship associated with marriage which the parties did not agree to at or prior to the time of entering into the marriage; or

vi) A party was induced to enter into the marriage by force or duress, or by fraud involving the essentials of marriage.

20.10.070 Provisions For Child Support, Custody and Visitation – Disposition of Property and Liabilities

In entering a Decree of Divorce or Declaration of Invalidity of Marriage, the Court shall consider, approve, or make provision for child custody and visitation, financial support of children, spousal maintenance, and the disposition of property and liabilities of the parties. Child custody and financial support for the benefit of children shall be governed by Chapter 20.09 of this code.

20.10.080 Temporary Maintenance or Child Support

In a proceeding for divorce or declaration of invalidity of marriage, either party may move for Temporary Maintenance or for Temporary Support of Children entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

20.10.090 Notice of Hearing

a) As part of a Motion for Temporary Maintenance or Support or by independent motion accompanied by affidavit, either party may request the Court to issue a temporary restraining order, order of protection, or preliminary injunction, providing relief proper in the circumstances and restraining or enjoining any person from:

   i) Transferring, removing, encumbering, concealing, or in any way disposing of any property except in the usual course of business, or for the necessities of life, and, if so restrained or enjoined, requiring him or her to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

   ii) Molesting or disturbing the peace of the other party or of any child of the marriage or of either party;

   iii) Entering the family home or the home of the other party, except upon a showing of the necessity for such an order; or

   iv) Removing a child from the jurisdiction of the Court.

b) A Motion for a Temporary Restraining Order must be accompanied by an Affidavit in Support of the Order. The Court may issue a temporary restraining order, without requiring notice to the other party, only if it finds that irreparable injury could result if an order is not issued.

c) The Court may issue a temporary restraining order or preliminary injunction and an order for temporary support in such amounts and on such terms as are just and proper under the circumstances.

d) A temporary order, temporary restraining order, or preliminary injunction:

i) Does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding;

ii) May be revoked or modified; and

iii) Terminates when the final decree is entered or when a petition for dissolution or declaration of invalidity is dismissed.

20.10.100 Failure to Comply

If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to prevent visitation is not suspended, but he or she may move the Court to grant appropriate order and the Court use its contempt powers to compel compliance with the order.

20.10.110 Disposition of Property and Liabilities - Factors

The Court has the power to divide property and debts of the parties in a proceeding for dissolution of the marriage or declaration of invalidity of the marriage. In making the division, the Court shall be guided by the following factors:

a) Separate property, as defined in Section 20.01.020, shall remain the property of its owner and shall not be divided by the Court. Separate property shall not be subject to the debts or contracts of the other;

b) The Court may divide the community property, as defined in Section 20.01.020, in a manner which, to the extent it is possible, leaves neither party at a serious disadvantage;

c) The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse having custody of any children. This section shall be interpreted in light of applicable housing regulations and restrictions; and

d) The duration of the marriage.

NOTICE TO THE COMMUNITY: Married and unmarried partners may enter into a variety of contracts regarding the ownership and division of their property. Pre-nuptial agreements, separate property agreements, community property agreements, living-together contracts, and wills are all ways that individuals can decide property issues for themselves.

20.10.120 Temporary Spousal Maintenance

The Court may order a spouse to pay the other spouse maintenance solely for the purpose of providing subsistence living expenses while the spouse secures a means of supporting himself or herself. In deciding whether to award spousal maintenance, the Court shall take into consideration such factors as:

a) Whether one spouse was disabled at the time of the marriage or became disabled during the marriage and has relied on monetary support from the other; or

b) Whether the spouses had agreed to an arrangement where one spouse provided monetary support and the other may have given up earning opportunities or capacity to rear children or maintain the household.

Spousal maintenance shall be temporary and shall only be awarded in cases where the end of the marriage will leave a spouse without financial resources. The Court shall order a specific ending date for the maintenance payments, not to exceed one (1) year. The spouse receiving maintenance shall have the burden of proving, to the Court's satisfaction, that his or her diligent efforts have not resulted in sufficient income to meet his or her subsistence living expenses and that a reasonable amount of additional time will result in the spouse being able to support himself or herself. Both parties shall have an opportunity to be heard.

20.10.130 Modification of Decree

A Court ordered property division between the spouses shall be final upon entry. Provisions for the custody of a child or for the financial support of a child may be modified at any time following entry upon a showing of good cause and changed circumstances. Such modifications can only be granted upon proper notice to all parties.

Chapter 20.11 Domestic Violence

20.11.010 Definitions

a) "Domestic Violence" includes but is not limited to any of the following crimes as defined by **Title 2 Law and Order Code** of the Shoalwater

Bay Indian Tribe as it exists now or as it may be amended, when committed by one family or household member against another:

Section	**Offense**
2.3.010	Assault
2.3.020	Assault and Battery
2.3.040	Rape
2.3.060	Reckless Endangerment
2.4.020	Abduction
2.6.010	Breaking and Entering
2.8.020	Child Abuse
2.8.030	Child Molestation
2.2.010	Attempt (of any of the above crimes)

b) "Family members or household members" means spouses, former spouses, adults related by blood or marriage, persons who reside together or have resided together in the past, and persons who have a child in common, regardless of whether they have ever lived together. This definition shall apply only to this title.

c) "Victim" means a family or household member who has been subjected to domestic violence.

OFFICIAL RESPONSE

20.11.020 Duties of the Shoalwater Bay Tribal Court in Domestic Violence

Because of the serious nature of domestic violence, the Court in domestic violence cases:

a) Shall not dismiss any charge or delay disposition because of concurrent dissolution or other civil proceedings;

b) Shall not require proof that either party is seeking a divorce prior to instigation of criminal proceedings;

c) The victim's location shall not be disclosed to any person, upon a showing that there is a possibility of further violence; and

d) Shall order an assessment in every case of domestic violence in which alcohol or other drugs were used. Treatment as recommended in the assessment shall be made part of any sentence.

20.11.030 Law Enforcement Officers – Duties in Domestic Violence Cases

a) The primary duty of law enforcement officers, when responding to a domestic violence situation, is to enforce the laws allegedly violated and to protect the victim(s).

b) When a law enforcement officer responds to a domestic violence call and he or she has probable cause to believe a crime has been committed, he or she shall either:

   i) Make an arrest and book the person into jail; or

   ii) Make an arrest and release the defendant, provided the defendant signs a *promise to appear* on a citation.

   Booking the defendant into jail shall be a mandatory procedure if the defendant was violating an existing order of protection.

   If the officer does not make an arrest or issue a citation (because of lack of probable cause), he or she shall advise the victim of the victim's right to make a civil and/or criminal complaint. The parties shall be advised of the importance of preserving evidence.

c) A law enforcement officer responding to a domestic violence call shall take a complete incident report including the officer's disposition of the case.

d) When a law enforcement officer responds to a domestic violence call, the officer shall give each person immediate notice of the legal rights and remedies available. The notice shall include providing each person a copy of the following statement:

   "IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the Shoalwater Bay Tribal Prosecutor to file a *criminal complaint*. You also have the right to file a *petition* in Shoalwater Bay Tribal Court requesting an *order for protection* from domestic abuse which could include any of the following: (a) an order restraining your abuser from further acts of abuse; (b) an order directing your abuser to leave your household; (c) an order preventing your abuser from entering your residence, school, business, or place of employment; (d) an order awarding you or the other parent custody of or visitation with your minor child or children; and (e) an order restraining your abuser from molesting or interfering with minor children in your custody. The forms you need to obtain a protection order are available from the Court Clerk of the Shoalwater Bay Tribal Court and from the Tribal Law Enforcement Office."

e) The law enforcement officer may arrange or facilitate transportation for the victim to a hospital for treatment of injuries or to a place of safety or shelter.

f) The law enforcement officer shall immediately notify Shoalwater Bay Social Services in all cases of domestic violence to facilitate services being offered to the family.

g) The *incident report* shall be forwarded to the appropriate prosecutor if there is probable cause to believe that an offense has been committed.

ORDERS OF PROTECTION

20.11.040 Petition for Protection – Victims May File

Any person who alleges that he or she has been the victim of domestic violence may file a Petition for an Order of Protection. A person may petition for relief on his or her own behalf and on behalf of any family or household members under the age of eighteen (18) years of age. Family or household members, including adults, may jointly file a single petition. Persons under age eighteen must have a parent or guardian file the petition unless the parent or guardian is the alleged abuser, or unless the youth is emancipated. In that case, an adult relative or friend may file on behalf of the minor.

20.11.050 Petition - Contents

A petition for protection from domestic violence shall include the name and address where the petitioner would like to receive notices from the Court; the allegation that domestic violence has taken place; the names and ages of all persons known by the petitioner to be in need of protection; the name, address, and age of the alleged abuser and his or her relationship to each victim. An affidavit shall be filed with the petition stating, in the petitioner's own words, the specific facts and circumstances of the alleged domestic violence.

20.11.060 Effect of Other Proceedings Pending

A petition for an order of protection may be filed regardless of whether other court proceedings between the parties have been filed or criminal charges have been filed against the alleged abuser.

20.11.070 No Bond Required

A person filing a petition for an order of protection is not required to post a bond in order to receive relief under this chapter.

20.11.080 Hearing - Service

Upon receipt of the petition, the Court shall order a hearing which shall be held no later than sixty (60) days from the date of the order. Personal service shall be made upon the respondent by qualified law enforcement personnel not less than five (5) days prior to the hearing. If timely service cannot be made, the Court may set a new hearing date. If personal service cannot be made after reasonable efforts, the Court may allow another form of service such as service by certified mail with return receipt requested, posting, or publication.

20.11.090 Order of Protection

Upon notice and after hearing, the Court may make an order of protection binding on either petitioner or respondent, based on which party is found by the Court to be the victim and who the abuser, or both. The order may:

a) Restrain a party from committing domestic violence;

b) Restrain a party from having contact, including physical, verbal, written, and telephone contact, with ay person(s) specified by the Court;

c) Excluding any party from the dwelling shared or from the residence of the other until further order of the Court;

d) Award temporary physical and/or legal custody and establish temporary visitation regarding minor children of the parties and restrain any interference with child custody;

e) Order the abuser and/or any victim participate in treatment or counseling;

f) Order a law enforcement officer to accompany a party and assist in executing the order of protection; and

g) Assess costs against the abuser, including filing fees, court costs, and costs of service.

20.11.100 Emergency Orders of Protection

Where a petition alleges that irreparable injury could result from domestic violence if an order is not issued immediately, without prior notice to the respondent, the Court may grant an Emergency Order for Protection, pending a full hearing and grant relief as the Court deems proper. Telephone, fax, and electronic orders are hereby authorized. A telephone order shall be followed with a written order from the judge, either mailed, faxed, or sent electronically

within three (3) days from the date of the telephone order. The order may include:

a) Restraining any party from committing acts of domestic violence;

b) Restraining any party from having contact with any person(s) specified by the Court;

c) Excluding any party from the dwelling shared or from the residence of the other until further order of the Court; and

d) Restraining any party from interfering with the other's custody of the minor(s).

20.11.110 Service of Order

a) Law enforcement shall serve the respondent personally, by giving it to the respondent directly or by leaving it at the respondent's residence or place of employment with a person at least 14 years old who lives or works there. Law enforcement shall promptly file with the Court Clerk a written statement describing where, when and how delivery was made.

b) The Court Clerk shall have a copy of any order issued under this chapter forwarded on or before the next judicial day to law enforcement for service upon the respondent. Service of an order issued under this chapter shall take precedence over the service of other documents unless they are of a similar emergency nature.

c) If law enforcement cannot complete service upon the respondent within ten (10) days, the petitioner shall be notified. The petitioner shall provide information sufficient to permit notification, if possible.

d) If an order entered by the Court recites that the respondent appeared in person before the Court, the necessity for further service is waived and proof of service of that order is not necessary.

e) A hearing on an emergency order shall be scheduled consistent with Section 20.11.080.

20.11.120 Order of Protection – Criminal Prosecution of Domestic Violence

a) The Court shall issue an order of protection upon a motion by the Prosecutor or on its own motion when any person charged with a crime involving domestic violence is released from custody pending arraignment,

trial, or sentencing; unless the Court finds good cause exists not to enter the order.

b) The Court shall issue a temporary order if a full hearing cannot be held prior to issuance. The effective dates of the order and the time limits for a full hearing may be modified by the Court under this section, to conform to the scheduling of the criminal proceedings.

c) If the Court has probable cause to believe that the person charged or arrested is likely to use or display or threaten to use a deadly weapon in any further acts of violence, the Court may also require that person to surrender any deadly weapon in that person's possession or control, to law enforcement. The weapon shall be released to the defendant if he or she is acquitted or if the case is dismissed. If the defendant is convicted, the Court shall order the weapon to be forfeited and disposed of for the benefit of the Shoalwater Bay Indian Tribe.

d) The Court may enter the order over the objection of the victim in order to protect the victim and other family members.

20.11.130 Assistance of Enforcement in Executing the Order

When an order is issued under this chapter upon request of the petitioner, the Court may order a law enforcement officer to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in the execution of the order of protection. If the Court orders the perpetrator to remove his or her belongings from the dwelling, law enforcement may be required to supervise the removal, at a time scheduled by law enforcement. The Court shall specify in its order the time scheduled by law enforcement. If a law enforcement officer has any doubt about the disposition of any property while enforcing the Court's order and the Officer has reason to believe the property may be unlawfully removed or harmed, the Officer may impound the property pending disposition by the Court. Law enforcement shall not be required to actually move the perpetrator's belongings.

20.11.140 Violation of Order - Penalties

a) Whenever an order for protection is granted under this chapter, a violation of the order is an offense punishable by a fine of not more than $5,000 or confinement for not more than one year, or both. This offense may be charged in addition to any offense committed in violating the order.

b) A law enforcement officer shall arrest without a warrant and take into custody a person whom the officer has probable cause to believe has violated an order of protection.

c) A violation of an order for protection shall also constitute contempt of Court under **Title 1 Court Procedures** of the Shoalwater Bay Tribe's Code of Laws. Upon the filing of an affidavit by the petitioner or a law enforcement officer alleging that the perpetrator has violated an order for protection granted under this chapter, the Court may issue an order requiring the respondent to appear and show cause why he or she should not be found in contempt of court and punished accordingly.

APPENDIX A

PREDICTING PARENTING CAPACITY

The more of these factors present, the greater the likelihood that therapeutic intervention can significantly improve parenting capacity:

1. Evidence of basically sound child development, with minimal developmental interference on the part of the parent.
2. Recent onset of problem, leading to decompensation in the family's functioning and the parent's ability to meet the child's developmental needs.
3. Absence of a chronic parental psychiatric diagnosis that is untreatable or that has a markedly poor prognosis.
4. Evidence of cooperation and openness (e.g. willingness of parent to discuss events and feelings even when these might reflect badly upon him or herself, and to consider the examiner's observations and suggestions) and a history of being able to seek, accept, and benefit from help for family problems.
5. Ability of the parent to accept significant responsibility for their contribution to the development of the problem or his or her past failure to deal with it.
6. Family members have maintained adequate relationships with extended family, neighbors, or community agencies from whom they can accept advice and support.

The more of these factors one sees, the less the likelihood that therapeutic intervention can significantly improve parenting capacity:

1. Evidence of widespread disturbances in physical, cognitive, language, academic, emotional, or social development.
2. Problems in development and adjustment have been present for years.
3. The parent suffers from a psychiatric illness which significantly affects his or her parental ability and which has associated with it a poor prognosis.
4. Past attempts to provide help have consistently failed. Parent lacks cooperation and openness, and resists involvement in the therapeutic process.
5. Parent cannot accept even partial responsibility for the genesis and maintenance of the problem, or for his or her failure to benefit from past treatment.
6. The family is isolated from the unable to accept help or emotional support from friends, neighbors, extended family, or mental health professionals.

SHOALWATER BAY INDIAN TRIBE

P.O. Box 130 • Tokeland, Washington 98590

Telephone (206) 267-6766 • FAX (206) 267-6778

Shoalwater Bay Indian Tribe
Resolution # 10-09-91-38

WHEREAS, The Shoalwater Bay Indian Tribe is a Federally Recognized Tribe Headquartered on the Shoalwater Bay Indian Reservation in the State of Washington;
and

WHEREAS, The Shoalwater Bay Tribal Council is the governing Body of the Shoalwater Bay Indian Tribe in accordance with their constitution And By-laws; AND

WHEREAS, The Shoalwater Bay Tribal Council has the power and responsibilit to enact laws governing the conduct of all persons and defining offenses against the Shoalwater Bay Indian Tribe; AND

WHEREAS,The Shoalwater Bay Indian Tribe is in need of effective and harmonious laws to govern people within the jurisdiction of the Tribe; AND

WHEREAS, The Family Code will provide procedures for enforcement of law and order to all people within the jurisdiction of the Shoalwater Bay Tribe; AND

WHEREAS, A Public Hearing was held regarding the Family code also known as Title 20, at Shoalwater Bay on October 5, 1991,

NOW THEREFORE BE IT RESOLVED, That the Shoalwater Bay Tribe hereby adopts the Attached Title 20 Family Code effective as of the date of this resolution with the provision to amend and/or delete as needed.

C E R T I F I C A T I O N

This resolution was passed at a Tribal Council meeting held Oct. 9, 1991 at which a quorum was present.

3 For 0 Against and 0 Abstentions

Douglas M. Davis, Chairman

Lynn Clark, Secretary

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SHOALWATER BAY INDIAN TRIBE
RESOLUTION 03-29-13-22

WHEREAS, The Shoalwater Bay Indian Tribe is a Federally Recognized Tribe headquartered on the Shoalwater Bay Indian Reservation in the State of Washington;

WHEREAS, The Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Indian Tribe in accordance to their Constitution and By-Laws; and

WHEREAS, The Shoalwater Bay Indian Tribe has the power and responsibility to enact laws governing the conduct of all persons and defining offenses,

WHEREAS, The Family Code, Title 20 was enacted in 1991, and has been in need of a modification, of which is attached, and

THEREFORE BE IT RESOLVED That the Shoalwater Bay Tribal Council hereby approves the modification of the Family Code Title 20.

CERTIFICATION

This resolution was passed at a Tribal Council meeting held March 29, 2013 at which a quorum was present 3 FOR 0 AGAINST 1 ABSTAIN.

Charlene Nelson, Chairperson
Shoalwater Bay Tribal Council

Lynn Clark, Secretary
Shoalwater Bay Tribal Council

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SHOALWATER BAY INDIAN TRIBE
RESOLUTION #11-20-13-03
TITLE 20 FAMILY CODE ADDITIONS

WHEREAS, The Shoalwater Bay Indian Tribe is a Federally Recognized Tribe headquartered on the Shoalwater Bay Indian Reservation in the State of Washington; and

WHEREAS, The Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Indian Tribe in accordance with their Constitution and By-Laws; and

WHEREAS, The Shoalwater Bay Tribal Council has the power and responsibility to enact laws governing the conduct of all persons and defining offenses against the Shoalwater Bay Indian Tribe; and

WHEREAS, The Shoalwater Bay Indian Tribe is in need of effective and harmonious laws to govern people within the jurisdiction of the Tribe; and

WHEREAS, The Shoalwater Bay Tribe does need to periodically update the Tribal Laws/Codes and the following additions needs to be inserted in Title 20 Family Code Chapter 20.04.010 a):

"A Youth/Child whose Parent(s) or Guardian is unable, unwilling, or unavailable to care for the Youth/Child (or Youth/Children)."

"A Youth/Child (Youth/Children) who fails to obey the Lawful commands of their Parent(s) or Guardian."

NOW THEREFORE BE IT RESOLVED, The Shoalwater Bay Tribal Council does hereby approve the additions noted above to be inserted after "Definitions" in the Title 20 Family Code Chapter 20.04.

CERTIFICATION

This Resolution was passed at a Regular Meeting of the Shoalwater Bay Tribal Council on the 20th day of November, 2013 at which a quorum was present: 5 FOR 0 AGAINST AND 0 ABSTAINING

Charlene Nelson, Chairperson
Shoalwater Bay Tribal Council

Lynn Clark, Secretary
Shoalwater Bay Tribal Council

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SHOALWATER BAY INDIAN TRIBE
RESOLUTION #05-25-18-17

RE: Amending the legal status of Marijuana on Reservation, and revising codes to reflect this.

WHEREAS, the Shoalwater Bay Tribe is a federally recognized Tribe headquartered on the Shoalwater Bay Indian Reservation in the State of Washington; and

WHEREAS, the Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Tribe in accordance with their Constitution and By-laws; and

WHEREAS, the Shoalwater Bay Tribal Council has the power and authority to consult, negotiate, contract and conclude agreements, on behalf of the Tribe, with various federal, state and tribal governments and agencies and with public and private persons and organizations; and

WHEREAS, the Tribal Council has the power and authority to impose taxes on all persons, property and activities within the Tribe's jurisdiction; to license and regulate the conduct of business activities within the Tribe's jurisdiction; and

WHEREAS, the Tribal Council has the power and authority to enact ordinances and laws governing the conduct of all persons and defining offenses against the Shoalwater Bay Indian Tribe; maintain order and protect the safety and welfare of all persons within the Shoalwater Bay Tribe's jurisdiction; and pass any ordinances or laws necessary to govern the administration of justice and the enforcement of all laws, ordinances or regulations; and

WHEREAS, a Public Hearing was held on May 25, 2018 where comments were heard, with a large majority FOR the amending of the legal status of Marijuana on the reservation;

WHEREAS, The Tribal Council approved revisions of the Tribe's Code of Laws Titles: 2 Law and Order, Title 9 Business and Licensing and Taxation, Title 16 Civil Infractions, Title 20 Family, Title 21 Rules of Criminal Procedure, Title 24 Fish and Wildlife, and Title 46 Traffic, and having heard comments from tribal members at the public hearing and believing it's in the best interest of the Tribe to amend the legal status of Marijuana on the Shoalwater Bay Indian Reservation, and

NOW THEREFORE BE IT RESOLVED THAT, the Tribal Council hereby approves final revised Law and Order Code Titles listed above.

Resolution #05-25-18-17

CERTIFICATION

This Resolution was passed at a regular Tribal Council meeting held at the Tribal Center on the 25th day of May, 2018 at which a quorum was present, by a vote of 5 **FOR** 0 **AGAINST** 0 **ABSTAINING.**

Charlene Nelson, Chairperson
Shoalwater Bay Tribal Council

Lynn Clark, Secretary
Shoalwater Bay Tribal Council