

**JUVENILE ORDINANCE
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Title 2 Chapter 15**

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PURPOSES

15.01 Purposes and Policy.

(a) The purposes of this Ordinance are to establish procedures to provide for the safety, care, and protection of all children within the jurisdiction of the Juvenile Court and all Klamath children; to secure for each such child nurturing, guidance, and supervision preferably in the child's own home; to prevent the unwarranted breakup of Klamath families by establishing procedures recognizing the rights of the child and his or her family and ensuring that the permanent removal of a Klamath child from his or her parent or Indian custodian is the last resort; and to promote the best interest and welfare of each such child giving full consideration to the traditional customs and unique values of the Klamath Tribes.

(b) It is the policy of the Klamath Tribes that:

(1) no resource is more essential and vital to the continued existence and integrity of the Klamath Tribes than their children, and the health and safety of such children shall be of paramount concern;

(2) the unity, stability, and security of the relationship between Klamath children and their natural families must be promoted and strengthened and unwarranted removal of Klamath children from their homes shall be prevented;

(3) where removal of a child from his or her family is necessary, primary placement considerations shall be given to insure that a Klamath child is raised within the Klamath tribal culture, that a Klamath child is raised within his or her extended family, and that a Klamath child is raised as an Indian;

(4) where reunification of the immediate family is not possible, long term placement without termination of parental rights is the strongly preferred approach and permanent removal shall be the last resort;

(5) cooperative intergovernmental relations are to be encouraged between the Klamath Tribes and the State of Oregon and other states and tribes in child welfare matters involving Klamath children and families, other Indian children, and non-Indian children;

(6) supportive child welfare and family services, which are respectful of Klamath

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traditions and cultural values, shall be available to Klamath children and their families;

(7) the right of a Klamath child to know and learn his or her culture and heritage by experiencing that culture on a daily basis shall be preserved and enhanced; and

(8) the provisions of the Indian Child Welfare Act Agreement between the State of Oregon and the Klamath Tribes, as it now exists or is hereafter amended, shall be fully implemented.

(c) The Klamath Tribes hereby declare that this Ordinance is in the best interest of Klamath children.

15.02 Administration and Enforcement. Any law enforcement officer, the Social Services Department, or any other person designated by this Ordinance, the Tribal Council, General Council, or the Juvenile Court is authorized to enforce the provisions of this Ordinance.

DEFINITIONS

15.03 Definitions. The following words shall have the following meanings under this Ordinance:

(a) "Abused child" means a child who has been physically, emotionally, psychologically, or sexually abused, mistreated, or exploited by any person; "child abuse" includes but is not limited to any case:

(1) in which a child is dead, or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fractures of any bone, subdural hematoma, soft tissue swelling, or any other physical injury or impact that may be the result of deliberate and/or inappropriate infliction by any person and this condition is not justifiably explained or may not be the result of accidental occurrence;

(2) in which a child is mentally or emotionally injured by the behaviors of any person and such injuries result in observable and substantial impairment of the child's mental, emotional, or psychological ability to function;

(3) in which a child is subjected to sexual assault, rape, sexual molestation, sexual exploitation, sexual contact, sexual abuse, pornography, or prostitution or is otherwise exposed to

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inappropriate sexual conduct; and/or

(4) in which a child is subjected to substantial risk of harm to his or her health, safety, welfare, or morals including risks associated with family violence;

(b) "Adoptive placement" means the permanent placement of a child for adoption, including any action resulting in a final decree of adoption;

(c) "Child" means any unmarried person under the age of eighteen (18) years;

(d) "Child custody proceeding" means foster care placement, termination of parental rights, preadoptive placement, long term placement, and adoptive placement, but such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime, or an award of custody to one of the parents in a proceeding for divorce or legal separation;

(e) "Child in need of supervision" means a child:

(1) who is subject to compulsory education but who is absent without an authorized excuse more than ten (10) days during a school semester;

(2) who disobeys habitually the reasonable and lawful demands of his or her parent, guardian, or custodian and is ungovernable and out of control;

(3) who commits an act not classified as criminal that is prohibited by the Klamath Tribal Code or any other Klamath tribal, regulation, ordinance, tradition, or custom;

(4) whose behavior, condition, environment, or associations are injurious or dangerous to himself or herself or others;

(4) who is a runaway; or

(5) who is otherwise in need of care and rehabilitation;

(f) "Child Protective Team" means the multi-disciplinary team established by this Ordinance to review allegations of abuse and neglect reported to a law enforcement agency or the Social Services Department;

(g) "Child Welfare Placement Board" means the Child Welfare Placement Board of the

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Klamath Tribes established in this Ordinance;

(h) "Custodian" means any person who has legal custody of a child under the laws, traditions, or customs of the Klamath Tribes or under a state law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(i) "Delinquent child" means a child who commits an act that, if committed by an adult, would be punishable as a crime under the Klamath Tribal Code or other applicable federal, state, or tribal law;

(j) "Developmentally disabled or mentally ill child" means a child who is physically or mentally ill or handicapped such that the child is impaired or incapable of understanding or acting with the discretion or in the manner of healthy children of the same age;

(k) "Extended family" means a person who is at least eighteen (18) years of age and who is the child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, or stepparent, or who is otherwise recognized as a relative of the child pursuant to the traditions and cultural customs of the Klamath Tribes;

(l) "Family violence" means any act, or threatened act, of violence, including any forceful detention of a person that results, or threatens to result, in physical or mental injury, and is committed by a person against another person to whom such person is or was related by blood or marriage or otherwise is legally related, or with whom the person is or was residing, or with whom such person has or had intimate or continuous contact and household access;

(m) "Foster care placement" means any action removing a child from his or her parent, guardian, or custodian for placement in twenty-four (24) hour substitute care in a foster care home, emergency shelter, preadoptive or long term care home, or other child care institution or facility and where the Social Services Department has placement and care responsibility;

(n) "Guardian" means a judicially created relationship between a child and caretaker that is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decisionmaking;

(o) "Guardian ad litem" means a special guardian appointed by the Juvenile Court to represent and defend the interests of a child in a proceeding before the Court;

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- (p) "Indian" means any person who is a member of a federally-recognized Indian tribe;
- (q) "Indian child" means any child who:
- (1) is a member of an Indian tribe; or
 - (2) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;
- (r) "Indian Child Welfare Act" means the act of November 8, 1978, Pub. L. No. 95-608, 92 Stat. 3069, codified at 25 U.S.C. §§ 1901 *et seq.*, and any regulations and guidelines promulgated thereunder, as such may be amended from time to time, *provided* that any such guidelines shall not be binding on the Juvenile Court; and
- (s) "Indian Child Welfare Act Agreement" means the Indian Child Welfare Act Agreement between the State of Oregon and the Klamath Tribes, as it now exists or is hereafter amended;
- (t) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village;
- (u) "Juvenile Court" or "Court" means the Klamath Juvenile Court unless the context otherwise requires;
- (v) "Klamath child" means any child who is a member of the Klamath Tribes or is eligible for membership in the Klamath Tribes and is the biological child of a member of the Klamath Tribes; or
- (w) "Klamath Tribal Lands" means all land, the title to which is held in trust by the United States for the benefit of the Klamath Tribes, held by the Klamath Tribes or a member of the Klamath Tribes subject to a restriction by the United States, or held in fee by the Klamath Tribes, and all other lands that may hereafter be acquired or conveyed in fee to, or held in trust for the benefit of, the Klamath Tribes, whether by purchase, gift, act of Congress, or otherwise;
- (x) "Klamath Tribal Service Area" means Klamath County, which is that geographical

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territory where the Klamath Tribes and their members residing therein are deemed to be residing in or near a reservation and eligible for all federal services and benefits available to federally recognized Indian tribes and their members who reside on or near a reservation, as provided by Section 2(c) of the Klamath Indian Tribe Restoration Act, Pub. L. No. 99-398, 100 Stat. 849 (Aug. 27, 1986), codified at 25 U.S.C. § 566;

(y) "Klamath Tribes" or "Tribes" means the Klamath Indian Tribe of Oregon, a federally-recognized Indian tribal government;

(z) "Law enforcement agency" or "law enforcement officer" means any law enforcement agency or officer thereof that is authorized to enforce the laws of the Klamath Tribes and/or to investigate allegations that a Klamath child or a child on Klamath Tribal Lands is abused, neglected, in need of supervision, or delinquent; and

(aa) "Legal custody" means the legal obligation and responsibility for the care, custody, and control of a child;

(bb) "Long term placement" means any long term placement or other permanent arrangement providing for the care and custody of a child before or after the termination of parental rights, but in lieu of adoptive placement;

(cc) "Neglected child" means a child who has been subjected to negligent treatment or maltreatment by a person, including but not limited to a parent, guardian, or custodian, under circumstances that indicate that the child's health or welfare is harmed or threatened, *provided* that "neglected child" specifically means a child:

- (1) who has been abandoned by his or her parents, guardian, or other custodian;
- (2) who is without proper parental care and control, subsistence, education, medical, or other care or control necessary for his or her well being because of the faults or habits of his or her parents, guardian, or other custodian, or their refusal or inability to so provide;
- (3) whose parents, guardian, or other custodian are unable to discharge their responsibilities to and for the child because of incarceration, hospitalization, addiction, immaturity, or other physical or mental incapacity; and/or
- (4) who is without the special care made necessary by his or her physical, mental,

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emotional, or psychological condition because his or her parent, guardian, or custodian refuses or is unable to provide it;

(dd) "Parent" means the biological parent of a child, or adoptive parent of a child under Klamath tribal law, tradition, or custom or under state law, but the term does not include an unwed father where paternity has not been acknowledged or established by a court of competent jurisdiction or by an affirmative act of the unwed father recognizing his relationship with the child;

(ee) "Person" means a natural individual (adult and child) unless the context requires otherwise;

(ff) "Preadoptive placement" means the temporary placement of a child in a foster care home or institution after the termination of parental rights, but prior to adoptive placement;

(gg) "Shelter care" means temporary refuge in a foster care home or other facility appropriate for children taken into protective custody pending Juvenile Court adjudication and disposition or transfer to another jurisdiction;

(hh) "Social Services Department" means the Social Services Department of the Klamath Tribes;

(ii) "Termination of parental rights" means any adjudication resulting in the termination of the parent's rights and of the parent-child relationship; and

(jj) "Ward" means a child who is subject to the supervision, care, and/or management of a person, agency, department, or institution legally appointed by the Juvenile Court and who remains under the continuing jurisdiction of the Juvenile Court; "ward" also means a child who is made a ward of the Juvenile Court under the provisions of this Ordinance.

THE JUVENILE COURT

15.04 Jurisdiction.

(a) Except as otherwise limited in the Klamath Tribal Code, the Juvenile Court shall have original jurisdiction over all matters arising from the administration and enforcement of this

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Ordinance, including but not limited to the following:

- (1) proceedings for the termination of parental rights;
- (2) proceedings for foster care placement;
- (3) proceedings for preadoptive and long term placement;
- (4) proceedings for adoptive placement;
- (5) proceedings for the determination of the custody of or to appoint a custodian or guardian for a child;
- (6) proceedings for the commitment of a developmentally disabled or mentally ill child; and
- (7) proceedings in which a child is alleged to be:
 - (A) abused;
 - (B) neglected;
 - (C) in need of supervision; or
 - (C) delinquent.

(b) Except as otherwise limited by applicable federal law, the Juvenile Court shall have jurisdiction exclusive as to any state over any child custody proceeding and any other proceeding described in Subsection (a) of this Section involving a Klamath child who resides or is domiciled on Klamath Tribal Lands, within the Klamath Tribal Service Area, or who is otherwise within the jurisdiction of the Juvenile Court; *provided that*, if the Juvenile Court's exclusive jurisdiction under this Subsection is limited by applicable federal law, the Juvenile Court shall have jurisdiction over such proceedings concurrent with the State of Oregon.

(c) The Juvenile Court shall have exclusive jurisdiction in any proceeding making a child a ward of the Court under this Ordinance and shall retain jurisdiction over such a child until the child reaches eighteen (18) years of age notwithstanding the residence or domicile of the child.

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(d) Except as otherwise limited by applicable federal law, the Juvenile Court shall have concurrent jurisdiction as to any state over child custody proceedings in such state involving foster care placement of or termination of parental rights to a Klamath child who does not reside or is not domiciled on Klamath Tribal Lands or within the Klamath Tribal Service Area; *provided* that the Juvenile Court shall have exclusive jurisdiction over those child custody matters commenced in Juvenile Court as a result of transfer under the Indian Child Welfare Act and/or pursuant to the Indian Child Welfare Act Agreement between the State of Oregon and the Klamath Tribes.

(e) Except as otherwise limited by applicable federal law, the Juvenile Court shall have original jurisdiction over child custody proceedings and any other proceedings described in Subsection (a) of this Section involving a non-Klamath child who resides or is domiciled on Klamath Tribal Lands or who is otherwise within the jurisdiction of the Juvenile Court when the parties consent to the jurisdiction of the Court or when the best interest of the child requires such an arrangement.

15.05 Transfers From the Juvenile Court.

(a) For good cause shown, the Juvenile Court shall have discretion to transfer a proceeding authorized by this Ordinance to the Klamath Tribal Court or to an appropriate federal, tribal, or state court having jurisdiction if:

- (1) the child or the child's parent, guardian, or custodian requests such a transfer;
- (2) the child is an Indian child at least sixteen (16) years of age, the act allegedly committed by the child would be a crime if committed by an adult, and the Juvenile Court determines that there is no reasonable chance for the rehabilitation of the child and that the alleged act committed presents a substantial threat to the Klamath tribal community; and/or
- (3) the interests of justice or the best interest of the child require a transfer.

(b) In making a determination under Subsection (a)(2) of this Section, the Juvenile Court shall determine whether a child should be tried as an adult only after hearing evidence on the nature of the alleged act, his or her past record and adjudications, and the nature and condition of the child, including his or her age and mental and physical condition.

(c) If a request for a transfer is made under this Section, the Juvenile Court may hold a

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transfer hearing not more than fifteen (15) days after the request for transfer is made and must give written notice of such hearing to the child and to the parent, guardian, or custodian at least forty-eight (48) hours before the hearing, including the time, place, and purpose of the hearing, and in the manner required for notice of hearings under this Ordinance.

(d) The Juvenile Court shall issue an appropriate transfer order to the court having jurisdiction stating the reasons for the transfer. A transfer order is a final order and terminates the jurisdiction of the Juvenile Court over the child.

15.06 Transfers From the Tribal Court to the Juvenile Court. If the Klamath Tribal Court determines during the pendency of a proceeding that a person is a child or was a child at the time an act occurred, the Klamath Tribal Court shall transfer the case to the Juvenile Court, together with all related documents. The Klamath Tribal Court shall issue an appropriate transfer order to the Juvenile Court stating the reasons for the transfer. A transfer order is a final order and terminates the jurisdiction of the Klamath Tribal Court over the child.

15.07 Transfer from State Courts to the Juvenile Court.

(a) The ICWA Specialist of the Social Services Department shall be the agent for the Klamath Tribes for service of notice of a state court child custody proceeding involving a Klamath child. The Director shall inform the Judge of the Juvenile Court immediately upon receipt of such notice. Thereafter, the Director of the Social Services Department shall initiate an investigation and cause a report to be prepared regarding the circumstances of the Klamath child, including the reasons for protective custody, the history of the case, and a recommendation to the Klamath Tribes as to whether the Tribes should:

- (1) request additional information from the state;
- (2) intervene in the state court child custody proceeding; and/or
- (3) request a transfer of the state court child custody proceeding to the Juvenile Court.

(b) The Social Services Department shall file its report with the Judge of the Juvenile Court within seven (7) days of the Director's receipt of notification of the state child custody proceedings.

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(c) The Director of the Social Services Department, in consultation with the Judge of the Juvenile Court and/or the Klamath Tribal Attorney, is authorized to make the decision whether or not to request additional information, to intervene, or to request a transfer on the Klamath Tribes' behalf in a state child custody court proceeding.

(d) The Juvenile Court may accept or decline state court transfers of child custody proceedings. In deciding when and whether to request and accept a transfer of a child custody proceeding from a state court, the Juvenile Court may distinguish between the adjudicatory (fact finding) and disposition (placement) stage of such a proceeding and may so limit its request or acceptance of a transfer in the interests of the child and judicial efficiency. It shall be the policy of the Klamath Tribes that, absent good cause to the contrary, child custody proceedings involving Klamath children should be heard in the Juvenile Court and that the Juvenile Court shall accept a transfer of a child custody proceeding from a state court if it determines that it is in the child's and the Klamath Tribe's best interest. In determining whether a transfer of a child custody proceeding is in the best interest of the child, the following factors shall be considered:

- (1) the past and present residences of the child;
- (2) the child or the child's family ties with the Klamath Tribes or the Klamath community;
- (3) any special conditions of the child and the ability of the Klamath Tribes' facilities or services to deal with such conditions;
- (4) the location of the witnesses, documents, and other evidence and the existence of subpoena and process limitations on the jurisdiction of the Klamath Tribes;
- (5) continuity in the child's surroundings and emotional contact; and
- (6) the wishes of the child's family, extended family, and other interested persons.

(e) ~~The Director of the Social Services Department or other tribal representative~~ designated by resolution of the Tribal Council is authorized to request additional information, to file a motion to intervene in the state child custody proceeding, or to petition for a transfer of such proceeding to the Juvenile Court. The Klamath Tribes shall make every effort:

- (1) to file a request for additional information within ten (10) days of the receipt

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of notification of the state child custody proceeding or within such other time period specified in the Indian Child Welfare Act Agreement between the State of Oregon and the Klamath Tribes; and

(2) to file a motion to intervene or petition for transfer in the state court child custody proceeding within twenty (20) days of the receipt of notification of the state child custody proceeding or within such other time period specified in the Indian Child Welfare Agreement between the State of Oregon and the Klamath Tribes.

(f) If the eligibility of the child or the child's parent(s) for tribal membership is at issue, the Enrollment Committee of the Klamath Tribes shall review and decide the issue on behalf of the Tribes.

15.08 Full Faith and Credit. As now or hereafter required by the Indian Child Welfare Act, the Juvenile Court shall give full faith and credit to the public acts, records, and judicial proceedings of other states and Indian tribes applicable to Indian child custody proceedings, to the same extent that such entities give full faith and credit to the laws, records, and judicial proceedings of the Klamath Tribes unless the Juvenile Court makes a determination, after a full, independent review of such state or tribal court proceeding that:

- (a) the state or tribal court did not have jurisdiction over the Klamath child;
- (b) the provisions of the Indian Child Welfare Act were not properly followed including any placement preferences adopted by the Klamath Tribes;
- (c) due process was not provided to all persons and parties participating in the state court proceeding; or
- (d) the state or tribal court proceeding violated the public policies, customs, traditions, or laws of the Klamath Tribes.

GENERAL PROVISIONS

15.09 Preliminary Inquiry; Informal Conference.

(a) All allegations that a child is abused, neglected, in need of supervision, or delinquent shall be referred promptly to the Social Services Department who shall conduct a preliminary investigation to determine the best interest of the child and the need for filing a petition. The

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Department shall conduct an independent investigation of such allegations involving a Klamath child even if a state agency is asserting jurisdiction over the child and conducting an investigation.

(b) An informal conference between an authorized employee of the Social Services Department and the child and the child's parent, guardian, or custodian may be held to discuss alternatives to the filing of a petition if:

(1) the child and his or her parent, guardian, or custodian consent voluntarily to an informal resolution;

(2) the admitted facts otherwise bring the case within the jurisdiction of the Juvenile Court; and

(3) in the judgment of the person designated to conduct the informal conference, an informal adjustment of the matter is in the best interest of the child and the Klamath Tribes.

(c) The parties to the informal conference may agree upon any of the following:

(1) the child and the parent, guardian, or custodian may be referred to a community agency for needed assistance;

(2) the child may be subject to terms and conditions of supervision, including traditional forms of supervision such as meetings with Klamath tribal elders and members of the child's extended family; and/or

(3) the child may be permitted to make an offer of restitution.

(d) Any of the agreed upon obligations or actions shall be completed within six (6) months, and the Social Services Department, or other designated person shall review the child's progress monthly.

(e) The disposition agreed to by the parties for remedying the situation shall be in writing, signed by an authorized employee of the Social Services Department or other person designated to conduct the informal conference, the child, and his or her parents, guardian, or custodian.

15.10 Filing a Petition to Begin Proceedings. Any law enforcement officer, the Social Services Department, or any other person authorized by the Juvenile Court or the Klamath Tribes having

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knowledge of a child, who resides or is domiciled on Klamath Tribal Lands or who is otherwise within the jurisdiction of the Juvenile Court, that appears to be abused, neglected, delinquent, or in need of supervision may initiate proceedings under this Ordinance by filing a petition with the clerk of the Juvenile Court.

15.11 Form and Content of Petition; Dismissal of Petition Unless Timely Hearing Held.

(a) A petition initiating proceedings under this Ordinance shall be captioned "In the Juvenile Court of the Klamath Tribes," and titled, "In the Matter of, a Child," and shall set forth with specificity:

- (1) the facts necessary to invoke the jurisdiction of the Juvenile Court;
- (2) if the commission of a prohibited act or violation of a tribal, state, or federal law is alleged, the citation to the appropriate law;
- (3) the name, birth date, and address of the child, whether the child is a Klamath child, his or her membership or eligibility for membership in the Klamath Tribes or any other Indian tribe, and the nature and extent of the child's connection to the Klamath Tribes and a Klamath family;
- (4) the name and address of the parents, guardian, or custodian, if any, of the child, and, if no parent, guardian, or custodian exists or can be found, the name of any known adult relative residing on Klamath Tribal Lands, or, if none, the known adult relative residing nearest to the Juvenile Court;
- (5) whether the child is in custody, and, if so, the place of detention and the time and date the child was taken into custody;
- (6) the name of the person presenting the petition and the date and time presented;
and
- (7) if any of the matters required to be set forth by this Section are not known, a statement of those matters and the fact that they are not known.

(b) A petition alleging that a child is in need of supervision or is a delinquent shall be dismissed if a hearing is not held by the Juvenile Court within ten (10) days from the date the

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petition was filed when the child is in custody, or within twenty (20) days from the date the petition was filed when the child is not in custody or is released unless continued by order of the Juvenile Court.

15.12 Issuance and Content of Summons.

(a) After a petition has been filed, the Juvenile Court shall issue summonses directed to the child if the child is sixteen (16) or more years of age or is alleged in the petition to be delinquent or in need of supervision; to the parent, guardian, or custodian, if any, of the child; and to such other persons as the Juvenile Court considers proper or necessary parties.

(b) A summons shall require the person to whom directed to appear personally before the Juvenile Court at the time fixed by the summons to answer the allegations of the petition. The summons shall have attached to it a copy of the petition. The summons shall advise the parties of their basic rights under this Ordinance, including the right to have counsel present at their own expense.

(c) The Juvenile Court may endorse upon the summons an order directing the parent, guardian, custodian, or other person having physical custody or control of the child to bring the child to the hearing.

(d) If it appears from any sworn statement presented to the Juvenile Court that the child needs to be placed in detention, the Juvenile Court may endorse on the summons an order that the law enforcement officer or other authorized person serving the summons shall at once take the child into protective custody and to the place of detention designated by the Juvenile Court, subject, however, to all of the provisions of this Ordinance relating to detention criteria, post-detention proceedings, and the rights of the child in regard thereto.

5.13 Service of Summons; Waiver of Service.

(a) If a party to be served with a summons can be found on Klamath Tribal Lands, the summons shall be served as provided by the Klamath Rules of Civil Procedure at least forty-eight (48) hours before the hearing.

(b) If a party to be served cannot be found on Klamath Tribal Lands, but his or her address is known, service of the summons may be made by mailing a copy to the party by certified mail, return receipt requested, at least five (5) days before the hearing.

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(c) If a party to be served cannot be found or his or her address ascertained after reasonable effort, within or without Klamath Tribal Lands, the Juvenile Court may order service of the summons by publication in accordance with the Klamath Rules of Civil Procedure, in which event the hearing shall be not less than five (5) days after the date of last publication.

(d) A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing. If the child is present at the hearing, his or her counsel, or if such counsel is not present, the parent, guardian, or custodian, may waive service of summons in his or her behalf. If the child is at least sixteen (16) years of age, the child also may waive service of summons by written stipulation or by voluntary appearance at the hearing.

15.14 Subpoenas. Upon application of a party, or upon its own initiative, the Juvenile Court may issue subpoenas compelling the attendance of witnesses to testify and produce records, documents, or other tangible items at a proceeding.

15.15 Contempt of Court. In accordance with the Klamath Tribal Court Ordinance, the Juvenile Court may cite and punish any person for contempt of court.

15.16 Postponement. Upon the motion of a party or upon its own initiative, the Juvenile Court may, in its discretion, postpone a proceeding upon good cause shown.

PARTIES AND BASIC RIGHTS OF PARTIES AT JUVENILE PROCEEDINGS

15.17 Parties to Juvenile Proceedings. Parties to Juvenile Court proceedings may include:

- (a) the child;
- (b) the parent, custodian, or guardian of the child;
- (c) the Social Services Department;
- (d) any other person or agency authorized by the Juvenile Court.

15.18 Appointment of Guardian Ad Litem. The Juvenile Court, at any stage of a proceeding under this Ordinance, may appoint a guardian ad litem or advocate for a child who is a party to the

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proceeding, *provided* that no party to the proceeding or officer or employee of an agency or a person who is or may be vested with legal custody of children who are abused, neglected, in need or supervision, or delinquent may be so appointed.

15.19 Basic Rights of Parties at Juvenile Proceedings.

(a) Except as otherwise provided in this Ordinance:

(1) a child that is sixteen (16) or more years of age, parent, guardian, and/or custodian shall have a right to written notice at least forty-eight (48) hours before a hearing, excluding weekends and Klamath tribal holidays, informing them of the title and purpose of the hearing and the date, time, and place of the hearing.

(2) in every hearing or proceeding conducted pursuant to this Ordinance, the Juvenile Court shall inform the parties that they have the right:

(A) in accordance with the Klamath Tribes' Tribal Court Ordinance, to be represented by a lay advocate or an attorney at their own expense;

(B) to be informed of the nature and cause of any allegations against them;

(C) to testify or remain silent and not to be a witness against themselves and that any statement made by them may be used against them;

(D) to confront and cross-examine witnesses;

(E) to subpoena, call, and present witnesses on their own behalf;

(F) to present evidence; and

(G) the possible consequences if the allegations of the petition are found to be true.

(b) At the time a child is taken into custody for alleged delinquency, the law enforcement officer or other person authorized to take the child into custody shall inform the child and his or her parent, custodian, or guardian of the following rights or warnings:

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- (1) they have the right to remain silent;
- (2) anything they say can be used against them in court;
- (3) during questioning they have the right to the presence of a lay advocate or an attorney at their own expense; and
- (4) if the child is placed in detention, from the time of detention, he or she shall not be questioned except in the presence of his or her parent, guardian, custodian, or lay advocate or attorney except to determine identity.

(c) In delinquency proceedings, extra-judicial statements and illegally seized or obtained evidence that would be inadmissible in criminal proceedings shall not be received by the Juvenile Court in evidence to establish the allegations.

(d) Any adjudication of delinquency by the Juvenile Court shall not be deemed a conviction nor shall a criminal proceeding by the Klamath Tribal Court based upon the allegations in the petition be instituted where the Juvenile Court has accepted an admission of the allegations in the petition or has begun taking evidence.

CUSTODY OF CHILDREN

15.20 Emergency Orders Making a Child a Ward of the Court.

(a) The Juvenile Court may issue an emergency order making a child who is located on Klamath Tribal Lands, within the Klamath Tribal Service Area, or who is otherwise within the jurisdiction of the Juvenile Court a ward of the Court if the Court has reasonable grounds to believe that the child:

(1) is a danger to himself or herself or in immediate danger from his or her parent, guardian, or custodian or surroundings and removal of the child from such persons, circumstances, or place is necessary for the health, safety, and welfare of the child;

(2) is neglected or abused and removal of the child from the home is necessary for the health, safety, and welfare of the child;

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(3) likely has a life-threatening physical injury or illness or is acutely mentally, emotionally, or psychologically disordered and requires immediate medical or psychiatric care, and the parents, guardian, or custodian of such child are unable or unwilling to seek such care for the child; or

(4) has run away from his or her parent, guardian, or custodian or caused damage to property or a person.

(b) The Juvenile Court may order a law enforcement officer or an authorized employee of the Social Services Department to take a child who is a ward of the Court into protective custody, *provided that*, before issuing such order, the Juvenile Court must determine that continuation of the child in his or her home would be contrary to the welfare of the child, which determination shall be explicitly documented in the court order. The Court also may make such other orders necessary to protect the health, safety, and welfare of the child.

(c) The Juvenile Court shall conduct a hearing within seventy-two (72) hours after issuing an emergency order taking a child into protective custody to determine if the order should be continued. If the whereabouts of the parents, guardian, or custodian of the child is known, the Juvenile Court shall have written notice of the hearing served upon such parent, guardian, or custodian and the child if the child is sixteen (16) or more years of age.

(d) The Juvenile Court shall make a determination as to whether reasonable efforts by the Social Services Department or other appropriate governmental agencies were made to prevent or eliminate the need for removal or that such efforts were not required under this Ordinance during the first full hearing (adjudicatory/disposition hearing(s)) on the petition or no later than sixty (60) days after the child's physical removal from his or her home, whichever is first.

15.21 Taking a Child Into Temporary Custody; Emergency Removals.

(a) A child may be taken into temporary custody:

(1) pursuant to an emergency order of the Juvenile Court, including an order issued because a parent, guardian, or custodian failed when requested to bring the child before the Court after having promised to do so at the time a child was previously released from custody;

(2) for an act of delinquency; or

(3) by any physician, authorized law enforcement officer, authorized employee of

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the Social Services Department, or juvenile counselor who has reasonable grounds to believe that the child:

(A) is a danger to himself or herself or is in immediate danger from his or her parent, guardian, or custodian or surroundings and removal of the child from such persons, circumstances, or place is necessary for the health, safety, and welfare of the child;

(B) is neglected or abused and removal of the child from the home is necessary for the health, safety, and welfare of the child;

(C) likely has a life-threatening physical injury or illness or is acutely mentally, emotionally, or psychologically disordered and requires immediate medical or psychiatric care, and the parents, guardian, or custodian of such child are unable or unwilling to seek such care for the child; or

(D) has run away from his or her parent, guardian, or custodian or caused damage to property or a person.

(b) Any authorized person who takes a child into temporary custody without a Juvenile Court order shall immediately:

(1) notify or attempt to notify the parents, guardian, or custodian of the child;

(2) notify the Social Services Department;

(3) notify the Juvenile Court and make such disposition of the child as directed by the Court or otherwise by this Ordinance; and

(4) notify or attempt to notify the parents, guardian, or custodian of the child when a hearing before the Court is scheduled.

(c) Notice under this Section may be given by any means reasonably certain of notifying the parents, guardian, or custodian of the child, including but not limited to written, telephonic, or in-person oral notification. If the notification is not in writing, written notification also shall be provided to the parents, guardian, or custodian of the child as soon as possible.

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15.22 Criteria for the Detention of Children. Unless ordered by the Juvenile Court pursuant to the provisions of this Ordinance, a child taken into temporary custody shall not be placed in detention or shelter care before a hearing by the Juvenile Court, unless probable cause exists that, if not detained:

- (a) the child will commit injury to persons or property of others, or cause injury to himself or herself;
- (b) the child will not receive adequate supervision and care from a parent, guardian, custodian, or other person;
- (c) the child will be neglected, abused, and/or in danger from his or her parent, guardian, or custodian or surroundings; or
- (d) the child will run away or be taken away so as to be unavailable for proceedings of the Juvenile Court.

15.23 Release of a Child from Temporary Custody.

(a) Unless a child's placement in detention or shelter care appears required by this Ordinance, a person taking a child into temporary custody without an order of the Juvenile Court shall, with all reasonable speed, release the child to his or her parents, guardian, or custodian upon their promise to bring the child before the Juvenile Court when requested by the Court.

(b) Willful failure by a parent, guardian, or custodian to bring a child released to their custody before the Juvenile Court upon request of the Court shall constitute and be punishable as contempt of court.

15.24 Place of Detention.

(a) A child alleged to be abused, neglected, or in need of supervision may be detained temporarily pending a Juvenile Court hearing in the following places:

- (1) a foster care home licensed and certified by the Social Services Department;
- (2) a facility operated and licensed by the Social Services Department or other child welfare services agency, a facility with which the Klamath Tribes have a contract for detention

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or placement of children, or other facility approved by the Social Services Department and licensed or certified under applicable law;

(3) an extended family member of the child who is willing to guarantee to the Juvenile Court that the child will not be returned to the alleged abusive or neglectful parent, guardian, or custodian without the prior approval of the Juvenile Court; or

(4) any other suitable facility designated by the Juvenile Court; *provided that* a child alleged to be abused, neglected, or in need of supervision, or who has been made a ward of the Juvenile Court shall not be detained in a facility intended or used for the incarceration of adults charged with criminal offenses or primarily used for the detention of children alleged to be delinquent children.

(b) A child alleged to be a delinquent may be detained temporarily pending a Juvenile Court hearing in any suitable facility intended or used for the detention of other children under this Ordinance and shall not be placed in a detention facility used for the detention of adults unless:

- (1) the child is sixteen (16) years of age or older;
- (2) the child is charged with an act subject to a jail sentence if the child were an adult;
- (3) the child will be detained in a cell separate from detained adults; and
- (4) adequate supervision is provided twenty-four (24) hours a day.

(c) Any child believed to be suffering from a serious physical, mental, emotional, or psychological condition or illness that requires either prompt treatment or prompt diagnosis shall be delivered immediately to a medical facility.

15.25 Detention Hearing Required for Detained Child; Required Court Determinations; Disposition.

(a) When a child, who has been removed from his or her home and taken into temporary, custody without a court order, is not released but is detained:

- (1) a petition for continued temporary custody and detention or other disposition

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shall be filed with the Juvenile Court within forty-eight (48) hours, excluding weekends and Klamath tribal holidays and, if not filed within the stated time, the child shall be released;

(2) a detention hearing on the child's temporary detention or placement in shelter care shall be held within forty-eight (48) hours, excluding weekends and Klamath tribal holidays, from the time of the filing of the petition to determine if continuation of the child in his or her home would be contrary to the welfare of such child; and

(3) the Juvenile Court shall make a determination as to whether reasonable efforts by the Social Services Department or other appropriate governmental agencies were made to prevent removal or that such efforts were not required under this Ordinance during the first full hearing (adjudicatory/disposition hearing(s)) on the petition or no later than sixty (60) days after the child's physical removal from his or her home, whichever is first.

(b) Written notice of the detention hearing stating the time, place, and purpose of the hearing shall be given as quickly as feasible by the person designated by the Juvenile Court to the child's parents, guardian, or custodian, if one can be found, and to the child if the child is sixteen (16) or more years of age and the petition alleges that the child is a delinquent child or a child in need of supervision.

(c) At the commencement of the detention hearing, the Juvenile Court shall advise the parties of their basic rights as provided in this Ordinance and, if appropriate, may appoint a guardian ad litem, guardian, or custodian.

(d) At the detention hearing, all relevant and material evidence helpful in determining the need for detention and temporary removal of the child from his or her home, including but not limited to hearsay, may be admitted by the Juvenile Court even though its admissibility may be challenged at the full hearing on the petition where admissible evidence must be provided.

(e) The Juvenile Court may order that the child be removed temporarily from his or her home if it determines that continuation of residence in the home would be contrary to the welfare of the child or that placement would be in the best interest of the child, which determination shall be documented explicitly in the court order.

(f) If the Juvenile Court finds that continued detention of the child is not appropriate under the criteria for the detention of children established by this Ordinance, the Juvenile Court shall order the release of the child but, in so doing, may:

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(1) place the child in the custody of a parent, guardian, custodian, or extended family member, or under the supervision of any agency or department agreeing to supervise the child;

(2) place restrictions on the child's travel, association with other persons, or place of abode during the period of his or her release; and/or

(3) impose any other condition deemed reasonably necessary and consistent with this Ordinance, including a condition requiring that the child return to custody if required.

(g) If the child is not released at the detention hearing, and a parent, guardian, or custodian was not notified of the hearing and did not appear or waive his or her appearance at the hearing, the Juvenile Court shall rehear the matter without unnecessary delay upon the child's parent, guardian, or custodian filing a motion for rehearing and an affidavit stating the relevant facts.

15.26 Standards for Detention and Shelter Care Facilities. A detention or shelter care facility must meet all applicable minimum standards of care, including but not limited to standards on cleanliness; heat, water and light; personnel; supervision; visiting privileges; occupancy; medical and dental care; food; and clothing.

15.27 Emergency Medical Care. When a child is held in custody, the Juvenile Court may order medical treatment that is reasonably necessary for the health and safety of such child.

HEARINGS BEFORE THE JUVENILE COURT

15.28 Conduct of Hearings Generally.

(a) All hearings on petitions under this Ordinance shall be conducted by the Juvenile Court separate from other proceedings and without a jury. Proceedings on petitions alleging that a child is abused, neglected, in need of supervision, or delinquent generally shall consist of two phases: an adjudicatory hearing to determine if the facts and allegations contained in a petition are true unless such allegations are admitted; and a disposition hearing to determine the child's best interests and needs for continued care and services.

(b) The proceedings shall be recorded by stenographic notes or by electronic, mechanical,

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or other appropriate means.

(c) All hearings shall be closed to the public. Only the parties, their counsel, witnesses, and other persons requested by the Juvenile Court may be present at a hearing. Upon motion by a party, the Juvenile Court may exclude witnesses from the hearing until they are called.

(d) If the Juvenile Court finds that it is in the best interest of the child, his or her presence may be temporarily excluded from a hearing, except when allegations of delinquency or need of supervision are alleged.

15.29 Notice of Hearings; Manner of Service.

(a) Except as otherwise provided in this Ordinance, written notice of a hearing describing the title and purpose of the hearing, and the date, time, and place of the hearing shall be served on the child's parents, guardian, or custodian, if one can be found; on the child if the child is sixteen (16) or more years of age or is alleged in the petition to be delinquent or in need of supervision; and on such other persons as the Juvenile Court considers proper or necessary parties. If any party is represented by counsel, service shall be made on the counsel only.

(b) If a party to be served with a notice of hearing can be found on Klamath Tribal Lands, the summons shall be served as provided by the Klamath Rules of Civil Procedure at least forty-eight (48) hours before the hearing, excluding weekends and Klamath tribal holidays.

(c) If a party to be served cannot be found on Klamath Tribal Lands, but his or her address is known, service of the notice of hearing may be made by mailing a copy to the party by certified mail, return receipt requested, at least five (5) days before the hearing, excluding weekends and Klamath tribal holidays.

(d) If a party to be served cannot be found or his or her address ascertained after reasonable effort, within or without Klamath Tribal Lands, the Juvenile Court may order service of the notice of hearing by publication in accordance with the Klamath Rules of Civil Procedure, in which event the hearing shall be not less than five (5) days after the date of last publication. The name of the child shall not appear in the notice of hearing.

(e) Service of a hearing notice on counsel for a party shall be made by delivering or mailing a copy of the notice to the counsel at his or her last known address, or by leaving it at his or her office with the person in charge.

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(f) Service by mail is complete upon mailing.

(g) A party, other than the child, may waive service of a hearing notice by written stipulation or by voluntary appearance at the hearing. If the child is present at the hearing, his or her counsel, or if such counsel is not present, the parent, guardian, or custodian, may waive service of summons in his or her behalf. If the child is at least sixteen (16) years of age, the child also may waive service of summons by written stipulation or by voluntary appearance at the hearing.

15.30 First Appearance and Fact Finding Adjudicatory Hearing on Petition.

(a) During their first appearance before the Juvenile Court, the parties shall be advised of their rights under this Ordinance and the specific allegations in the petition, and shall be given an opportunity to admit or deny such allegations. Any admission shall require a determination by the Juvenile Court that the admission is based in fact and voluntarily made with no threat of force or duress.

(b) If the allegations are denied, the Juvenile Court may combine the first appearance with the fact finding adjudicatory hearing and proceed to hear evidence on the petition immediately or the Court may set a separate fact finding adjudicatory hearing on the petition.

(c) After hearing all of the evidence bearing on the allegations, the Juvenile Court shall make and record its findings on the allegations and issue an order of adjudication as follows:

(1) If the Juvenile Court finds that the allegations in the petition have not been established, it shall dismiss the petition and order the child discharged from any temporary detention or shelter care previously ordered in the proceeding.

(2) If the Juvenile Court finds that the alleged act committed by the child warrants a transfer, transfer the case to the Klamath Tribal Court or other appropriate court having jurisdiction;

(3) If the Juvenile Court finds from that the allegations in a petition that a child is abused, neglected, in need of supervision, or delinquent are supported by a preponderance of evidence or by stipulation, the Juvenile Court shall issue an order of adjudication:

(A) setting forth that the child is abused, neglected, in need of supervision,

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and/or delinquent; and

(B) making the child a ward of the Court.

15.31 Judicial Determinations Regarding “Contrary to the Welfare” and “Reasonable Efforts” Required for Removal and Placement.

(a) At the first full hearing (adjudicatory or disposition) where the Juvenile Court addresses the allegations in the petition and orders (even temporarily) the removal of the child from his or her home, the Court shall determine that continuation of the child in his or her home would be contrary to the welfare of the child and that placement would be in the child’s best interest; *provided* that such a determination is not required where the child is removed pursuant to a voluntary placement agreement; *provided further* that such a determination shall be in addition to any “contrary to the welfare” determination made by the Juvenile Court in accordance with this Ordinance at the time any emergency order was issued to remove the child temporarily from his or her home.

(b) When the Juvenile Court orders the removal of a child from his or her home and assigns to the Social Services Department the responsibility for placement and care of the child, the Court shall determine whether reasonable efforts to prevent removal and to preserve family unity were made by the Social Services Department or other appropriate governmental agency or that the circumstances of the case were such that reasonable efforts to prevent removal were not required. In making reasonable efforts, a child’s health and safety shall be of paramount concern. This determination concerning “reasonable efforts” shall be made during the first full hearing (adjudicatory or disposition) on the petition or no later than sixty (60) days after the child’s physical removal from his or her home, whichever is first.

(c) Circumstances where reasonable efforts are not required to prevent a child’s removal or to reunify the child and family under Section 15.45 of this Ordinance include the following:

(1) a court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances (as defined in applicable federal, state, or tribal law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(2) a court of competent jurisdiction has determined that the parent has:

(A) committed murder of another child of the parent;

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- (B) committed voluntary manslaughter of another child;
 - (C) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or
 - (D) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or
- (3) the parental rights of the parent to a sibling have been terminated involuntarily.
- (d) Judicial determinations regarding “contrary to the welfare” and “reasonable efforts” shall be documented explicitly in the order of the Juvenile Court which removes the child from the home.

15.32 Disposition Hearings.

- (a) After issuing an order of adjudication, the Juvenile Court shall set a disposition hearing date not less than seven (7) days after the adjudicatory hearing and request a predisposition study and report by the Social Services Department. Notice of a disposition hearing shall be given to the child if the child is sixteen (16) or more years of age, and the child’s parents, guardian, or custodian, and their counsel.
- (b) In disposition hearings, all evidence helpful in determining the questions presented, including oral and written reports, may be received by the Juvenile Court and may be relied upon to the extent of its probative value, even though not competent in a hearing on the petition. The parties or their counsel shall be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making reports.
- (c) After hearing evidence and receiving any predisposition studies and reports as to the child’s need for continued care and services, the Juvenile Court shall issue such disposition orders that are in the best interests of the child and consistent with this Ordinance.

15.33 Effect of Orders of Adjudication and Disposition.

- (a) An order of disposition or adjudication in proceedings under this Ordinance shall not

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be deemed a conviction of crime or operate to disqualify the child in any civil service or tribal employment application or appointment.

(b) The disposition of a child and evidence given in a hearing in the Juvenile Court shall not be admissible against him or her in any case or proceeding in any other court.

15.34 Predisposition Studies, Reports, and Examinations.

(a) If necessary for the best interest of the child, at any time after the filing of a petition, the Juvenile Court may direct that a predisposition study and report be made in writing to the Court by the Social Services Department; *provided* that the predisposition study and report shall not be made before the Court makes its findings on the allegations in the petition and issues an order of adjudication unless a notice of intent to admit the allegations is filed and the admitting party consents thereto. The Social Services Department shall provide copies of the predisposition report and study to counsel for all parties, or if none, to the parties at least forty-eight (48) hours before the disposition hearing.

(b) The predisposition study and report shall include, but not be limited to the following matters:

(1) a description of the specific harm to the child that intervention is designed to alleviate and the likely harm that a child may suffer if he or she is removed from the home and separated from his or her parents;

(2) a proposed treatment plan describing the steps that the parents and/or child must take to prevent further harm to the child, a timetable for their completion, why such a program will be useful, the availability of the proposed services, and the Social Services Department's overall plan for ensuring that the services will be delivered;

(3) if removal from the home or continued residence outside the home is recommended, a description of previous efforts to work with the parent and child in the home, and the in-home treatment programs that have been considered and rejected;

(4) a description of steps that will be taken to minimize harm to the child that may be caused if separation from the parent occurs or continues; and

(5) a description of the behavior that will be expected before a determination is

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made that supervision of the family or placement is no longer necessary.

(c) Where the child has been found to be abused or neglected, the Child Protective Team shall file its final report and recommendations with the Social Services Department and the Juvenile Court as required by this Ordinance.

(d) Where there are indications that the child may be mentally disabled, upon a motion by a party or upon its own initiative, the Juvenile Court may order the child examined at a suitable place by a psychiatrist or psychologist. Such examinations shall be conducted on an out-patient basis unless the Juvenile Court finds that placement in a hospital or other appropriate facility is necessary.

(e) Before issuing an order of disposition, the Juvenile Court may order an examination by a physician, psychiatrist, or psychologist of a parent, guardian, or custodian whose ability to care for or supervise a child is at issue before the Court. The Juvenile Court may consider as a factor in deciding the disposition of a child any refusal of a parent, guardian, or custodian to submit to such an examination.

15.35 Suspension Decree: Continued Supervision Without Adjudication.

(a) At any time after the filing of a petition, but before entry of an adjudication order, the Juvenile Court, on its own motion or on motion of any party, may suspend the proceedings and continue the child under supervision in the child's own home pursuant to a suspension decree, under such terms and conditions as are recommended by the Social Services Department and agreed to by all the parties.

(b) A suspension decree shall remain in force for twelve (12) months unless the child is discharged sooner from supervision by the Juvenile Court.

(c) If prior to discharge by the Juvenile Court or expiration of the suspension decree, a new report of abuse, neglect, need of supervision, or delinquency petition is filed against the child, or a report by the Social Services Department indicates that the child, parent, custodian, or guardian has failed to abide by the terms and conditions of the suspension decree, the original petition may be reinstated in the discretion of the Juvenile Court and the case may proceed as if the suspension decree had never been entered.

(d) A case which is discharged by the Juvenile Court, or which completes the period of the suspension decree successfully, shall not be proceeded against in any court for the same specific

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acts alleged in the original petition; *provided* that nothing in this Subsection shall prevent the Juvenile Court from receiving and considering evidence of a previous proceeding in a subsequent proceeding for other admissible purposes, including but not limited to demonstrating a pattern of conduct.

DISPOSITION AND TYPES OF DISPOSITION ORDERS

15.36 General Policies and Principles Guiding Disposition. In making any disposition under this Ordinance to protect the health, welfare, and safety of a child, the Juvenile Court and Social Services Department shall evaluate each case and determine the best interests of the child. If the child is a Klamath child, every disposition and recommendation for disposition shall be made with due consideration of the following policies and principles:

(1) if removal of a Klamath child from his or her parent is necessary for the child's health, welfare, and safety, the primary consideration in the placement of such a child should be to insure that the child is raised within the Klamath culture, that the child is raised within his or her family if possible, and that the child is raised as an Indian;

(2) supportive child welfare and family services that respect the traditions and cultural values of the Klamath Tribes should be made readily available to Klamath children and their parents and families;

(3) the right of Klamath children to know and learn their culture, traditions, and heritages by experiencing the culture of the Klamath Tribes on a daily basis should be preserved;

(4) reasonable efforts by the Social Services Department and other appropriate governmental agencies should be fully employed before removing a Klamath child from his or her parent and/or immediate family and before a final determination is made that the child clearly cannot be returned to his or her parent and/or immediate family; *provided* that the safety of the child shall be paramount;

(5) if reunification of a Klamath child with his or her parent is not possible, removal and long term placement without termination of parental rights shall be the preferred approach and termination of parental rights shall be the last resort; *provided* that the preferred approach shall not be interpreted to prohibit adoption in all instances; *provided further* that long term placement without termination of parental rights shall be based on the best interest of the child.

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15.37 Placement Preferences for a Klamath Child.

(a) Foster Care. Any child accepted for foster care, preadoptive placement, or long term placement shall be placed in a safe setting that is the least restrictive (most family like) and most appropriate setting available in close proximity to the parents' home, consistent with the best interest and special needs of the child. In every foster care, preadoptive placement, or long term placement of a Klamath child, the Juvenile Court shall give a preference in the following order to a placement with:

- (1) a member of the Klamath child's extended family;
- (2) a Klamath Indian foster care home licensed, approved, certified, and/or specified by the Klamath Tribes;
- (3) an Indian foster care home licensed, approved, certified, and/or specified by the Klamath Tribes;
- (4) an Indian foster care home certified by the State of Oregon;
- (5) a non-Indian foster care home licensed, approved, certified, and/or specified by the State of Oregon and/or the Klamath Tribes and agreed to for the placement of each Klamath child on a case-by-case basis; or
- (6) an institution for children approved by the Klamath Tribes or operated by an Indian organization which has a program suitable to meet the special needs of a Klamath child.

(b) In all cases where Klamath children are placed in non-Klamath foster homes, mandatory cultural training will be provided by the Klamath Tribes. In all such cases, the Social Services Department shall conduct periodic reviews to address the issue of potential bonding of the non-Klamath foster parents to the Klamath child and to determine whether the Klamath child should be removed and placed in another foster home until a Klamath Indian foster care home is available. It shall be the policy of the Klamath Tribes that the interest of a non-Klamath foster parent in a Klamath child that could develop through bonding shall not outweigh the right and interest of a Klamath child to be raised in a Klamath home and to experience the culture of the Klamath Tribes on a daily basis.

(c) Adoptive Placement. In every adoptive placement of a Klamath child, the Juvenile

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Court shall give preference in the following order to a placement with:

- (1) a member of the Klamath child's extended family;
- (2) other members of the Klamath Tribes; or
- (3) other Indian families.

(d) In the case of either adoptive or foster care placement of a Klamath child, the Tribal Council of the Klamath Tribes may, by resolution, alter the placement preferences set forth in this Section; *provided* that any such placement determined thereafter shall be the least restrictive and most appropriate setting consistent with the best interests and needs of the Klamath child.

15.38 Disposition of a Neglected or Abused Child. If a child is found by the Juvenile Court to be neglected or abused, the Juvenile Court in its judgment shall issue an order of disposition in the best interests of the child, including but not limited to any of the following orders:

(a) order that the child and/or the child's parent, guardian, or custodian obtain professional counseling;

(b) order that the child obtain special psychological or medical treatment and care;

(c) order that the child's parent, guardian, or custodian obtain education in parenting skills, nutrition, child development, family violence prevention, or other specified areas;

(d) permit the child to remain in the home with his or her parent, guardian, or custodian, subject to such conditions and limitations as the Court may prescribe, and subject to the continued supervision of the Court and the Social Services Department;

(e) place the child under the protective supervision of the Social Services Department;

~~(f) remove the child from the home and order that legal custody of the child be transferred to the Social Services Department and that the child be placed in foster care in accordance with the foster care placement preferences set forth in this Ordinance, *provided* that a child who is abused or neglected shall not be placed and detained in a facility intended or used for the detention of delinquent children or adults charged with or convicted of criminal offenses;~~

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(g) order that legal custody of the child be transferred to the Oregon State Office for Services to Children and Families, subject to any applicable terms of the Indian Child Welfare Act Agreement between the State of Oregon and the Klamath Tribes;

(h) remove the child from the home and order that the child be placed in preadoptive or long term placement in accordance with the placement preferences set forth in this Ordinance; and/or

(i) order that proceedings for the termination of parental rights begin.

15.39 Disposition of a Child in Need of Supervision or Delinquent Child. If the Juvenile Court finds that a child is in need of supervision or delinquent, the Court may issue an order of disposition for his or her care, supervision, and rehabilitation, including but not limited to any of the following orders:

(a) order any disposition authorized by this Ordinance for a child found to be neglected or abused, *provided* that a child who is need of supervision shall not be placed or detained in a facility intended or used for the detention of delinquent children or adults charged with or convicted of criminal offenses;

(b) place the child on probation under the supervision of the Social Services Department, subject to such conditions and limitations as the Court may prescribe.

(c) order that the child be referred to a screening program for examination, recommendations, and, if necessary, appropriate care and rehabilitation for drug and alcohol abuse and addiction treatment;

(d) order that the child and/or the child's parent, guardian, or custodian obtain education or professional counseling in any specified area;

(e) order that the child, parent, guardian, or custodian pay a civil fine or make reasonable restitution for any damage or loss caused by the child's violation of any Klamath tribal law, custom, or tradition;

(f) order that the child be placed under the supervision of a probation officer or the Social Services Department in his or her own home under the conditions imposed by the Juvenile Court, including reasonable rules for conduct;

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(g) order the child to perform a specified number of hours of Klamath tribal community service;

(h) order that the child and/or the child's parent, guardian, or custodian be referred to an appropriate mental health program provided by the Social Services Department or other designated agency;

(i) order that the issuing agency of the child's driver's license be notified and requested to suspend, revoke, or cancel the child's drivers' license; and/or

(j) transfer legal custody to an agency, department, institution, or facility responsible for the care of delinquent children, *provided* that the child shall remain subject to the exclusive orders of the Juvenile Court as a ward of the Court.

15.40 Disposition of a Developmentally Disabled or Child With a Mental Illness. If, at any stage of a proceeding for neglect, abuse, need for supervision, or delinquency, the evidence indicates that the child is or may be developmentally disabled or have a mental illness, the Juvenile Court may transfer legal custody of the child for a period normally not exceeding ninety (90) days to an appropriate person, agency, department, institution, or facility for further study and evaluation of the child's condition. Thereafter, the Juvenile Court may issue an appropriate order of disposition to protect the best interests, health, and welfare of the child.

15.41 Progress Reports. Whenever the Juvenile Court grants legal custody or protective supervision of a child to an agency, department, institution, facility, or person, the Court shall require written reports to the Court on the welfare and progress of the child on a quarterly or such other basis deemed appropriate for the particular child's care.

15.42 Duration of Disposition Orders.

(a) Except as otherwise ordered by the Juvenile Court:

(1) orders vesting legal custody of a child in an individual shall remain in force for two (2) years from the date entered; and

(2) orders vesting legal custody of a child in an agency, department, institution, or facility and orders of protective supervision shall remain in force until further order of the Juvenile Court.

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~~(b) When a child reaches eighteen (18) years of age, all orders affecting him or her shall terminate.~~

15.43 Modification, Revocation, or Extension of Juvenile Court Orders. At any time prior to expiration, an order vesting legal custody or an order of protective supervision made by the Juvenile Court may be modified, revoked, or extended on motion by:

(a) a child, whose legal custody has been transferred to an agency, department, institution, facility, or person, alleging that he or she is no longer in need of commitment and that the agency, department, institution, facility, or person has denied his or her application for release or has failed to act upon the application for release within a reasonable time;

(b) the parents, guardian or other custodian of such child; or

(c) the agency, department, institution, facility, or person vested with legal custody or responsibility for protective supervision.

15.44 Determination of Beginning of Foster Care.

(a) A child shall be considered to have entered foster care on the earlier of:

(1) the date of the first judicial finding that the child is abused, neglected, or in need of supervision and placement and care responsibility is given to the Social Services Department by the Juvenile Court (adjudicatory/disposition hearing); or

(2) the date that is sixty (60) days after the date on which the child is removed physically from his or her home.

(b) When a child enters foster care on the basis of a written voluntary placement agreement, the child shall be considered to have entered foster care on the date on which a voluntary placement agreement is signed placing the child in the Tribe's custody.

15.45 Periodic Case Review Hearings Following Foster Care and Other Out of Home Dispositions; Permanency Hearings.

(a) The status of each child placed in foster care or other out-of-home arrangement shall

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be reviewed by the Juvenile Court not less frequently than every six (6) months while the child remains in out of home placement.

(b) The case review hearing shall:

(1) Review the placement and plan for assuring that the child receives safe and proper care;

(2) Determine whether the Social Services Department is making reasonable efforts to reunify the family and make it possible for the child to return safely to the home when the goal or plan for the child is to reunify with the family;

(3) Determine the continuing need for and appropriateness of the placement;

(4) Determine the extent of compliance with any conditions and terms in the disposition order of the Juvenile Court or with any foster care case plan required by the Court to be prepared by the Social Services Department;

(5) Determine the extent of progress made toward alleviating or mitigating the causes necessitating foster care or other out-of-home placement; and

(6) Project a likely date by which the child may be returned to and safely maintained at home or placed for adoption or placed in another permanent living arrangement.

(c) The Juvenile Court or the Social Services Department shall hold a permanency hearing no later than twelve (12) months after the date that the child is considered to have entered foster care or within thirty (30) days of a judicial determination that reasonable efforts to reunify the child and family are not required due to the circumstances set forth in Section 15.31(c) of this Ordinance and not less frequently than every twelve (12) months thereafter while the child remains in out of home placement, including voluntary foster care placement, except where the Court has ordered placement on a permanent basis.

(1) The permanency hearing shall determine the permanency plan for the child that includes:

(a) whether the Social Services Department is making reasonable efforts to reunify the family and make it possible for the child to return safely to the home when the goal or plan for the child is to reunify with the family;

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(b) whether and if applicable when, the child will be returned to the parent;

(c) where the Tribe has documented to the satisfaction of the Court a compelling reason for determining that it would not be in the best interest of the child to return home, the plan for placing the child with a fit and willing relative or legal guardian, or placement in another permanent living arrangement;

(d) where the permanency goal becomes adoption or placement in another permanent out-of-home placement, whether the Social Services Department is making reasonable efforts to make and finalize a child's permanent placement in a timely manner consistent with the permanency plan.

(e) For a child in out-of-state placement, the permanency hearing shall determine whether the out-of-state placement continues to be appropriate and in the best interests of the child.

(f) For children who have attained sixteen (16) years of age, the permanency hearing shall determine the services needed to assist the child in making the transition from foster care to independent living.

(2) Permanency hearing determinations regarding reasonable efforts to reunify the family (or that reasonable efforts to reunify are not required under Section 15.31(c) of this Ordinance) and reasonable efforts to make and finalize the child's permanent placement must be explicitly stated in an order of the Juvenile Court. In making reasonable efforts, the child's health and safety shall be of paramount concern.

(e) In connection with a disposition review and permanency hearing, the Juvenile Court may issue such orders as are necessary and in the best interest of the child.

(f) The foster care parent(s) of a child and any preadoptive parent or relative providing care for the child shall be provided with notice of, and an opportunity to be heard in, any disposition, case review, permanency hearing or any other hearing with respect to the child, *provided* that nothing herein shall require that any foster care parent(s), preadoptive parent, or relative providing care for the child be made a party to such a review or hearing solely on the basis of such notice and opportunity to be heard.

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15.46 Visitation. Any parent, guardian, custodian, or extended family member of a child placed in the legal custody of another person, agency, department, institution, or facility may petition the Juvenile Court for reasonable rights of visitation. The Court shall allow such visitation unless it determines that the best interests of the child precludes such visitation.

15.47 Order for the Return of a Child Placed Off of Klamath Tribal Lands. Whenever a Klamath child is placed in a foster care home or other facility located off of Klamath Tribal Lands, the Juvenile Court shall require the party receiving custody of the child to sign an agreement that the child will be returned to the Juvenile Court upon order of the Court and that the party receiving custody of the child consents to the jurisdiction of the Juvenile Court for all purposes related to such placement.

15.48 Court Costs and Expenses. If, after due notice to the parent, custodian, or guardian legally obligated to care for and support the child and after a hearing, the Juvenile Court finds that such person is financially able to pay all or part of the court costs and expenses, the Court may order such person to pay such costs and expenses. If the parent, guardian, or custodian willfully fails or refuses to pay such sum, the Juvenile Court may proceed against said person(s) for contempt of Court. The Juvenile Court also may issue an order for payment, which shall have the effect of a civil judgment for amounts due, and which may be enforced through appropriate measures including garnishment.

15.49 Support of a Child.

(a) Whenever the Juvenile Court finds it necessary to place a child in the custody of the Social Services Department or with another designated person, agency, department, institution, or facility the Court may order that the parent, guardian, or custodian pay a monthly sum imposed by the Court toward such foster care. The amount of such sum shall be determined by the Court based upon ability to pay and any guidelines established under Klamath tribal law or by the Social Services Department for child support.

(b) If the parent, guardian, or custodian willfully fails or refuses to pay such sum, the Juvenile Court may proceed against said person(s) for contempt of Court. The Juvenile Court also may issue an order for payment, which shall have the effect of a civil judgment for amounts due, and/or refer the matter for enforcement of child support through appropriate tribal or state agencies. The Juvenile Court shall allocate the distribution of sums collected, and such allocation shall include distributions required by any agreement governing foster care maintenance payments between the Klamath Tribes and the State of Oregon.

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(c) Whenever the Social Services Department has accepted custody of a child under this Ordinance and is required to provide financial assistance for the care and support of the child, it shall, by operation of tribal law, be the assignee of any right to support of the child from any other person, including any sums that may have accrued, up to the amount of assistance provided by the Social Services Department. If the right to support is contained in a decree or order that requires a single monthly payment for the support of two (2) or more children, the assignment shall be the child's proportionate share of the gross amount.

15.50 Protective Orders.

(a) Upon application by a party or the Social Services Department, or upon the Court's own motion, the Juvenile Court may issue a protective order restraining the conduct of any person over whom the Court has jurisdiction, if:

(1) an order of disposition of a child who is abused, neglected, in need of supervision, or delinquent has been made in a proceeding under this Ordinance; or

(2) the Court finds that the person's conduct is or may be detrimental or harmful to the child; and

(3) notice of the application or motion and the grounds therefore and an opportunity to be heard thereon has been given to the person against whom the order is directed.

(b) The Juvenile Court may order an *ex parte* restraining order pending an adjudication or a disposition hearing on a petition upon finding reasonable cause to believe that the child's health, safety, welfare, or morals are at imminent risk of harm.

SPECIAL PROCEEDINGS

15.51 Voluntary Temporary Placement Outside the Home.

(a) Upon written application by a parent, guardian, or custodian, and for good cause shown, the Social Services Department may, on behalf of the Klamath Tribes, accept the care and custody of a child for temporary voluntary placement outside the home. The parent, guardian, or custodian seeking voluntary placement and the Social Services Department shall execute a written voluntary placement agreement specifying the legal status of the child and the rights and obligations

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of the parties and child during the voluntary placement.

(b) Before accepting a child for voluntary placement, the Social Services Department shall document:

(1) the efforts made to provide or arrange for services by other public or private agencies that would be affordable and effective at alleviating the conditions leading to the placement request;

(2) any determination that such services are not available;

(3) any refusal by the parent, guardian, or custodian to accept such services; and

(4) the fact that the conditions leading to the placement request cannot be alleviated by available services aimed at keeping the child in the home.

(c) The Social Services Department shall cause the Juvenile Court to review the voluntary placement of a child outside the home within seven (7) working days of such placement.

(d) No child shall remain in voluntary placement longer than 180 consecutive days or 180 cumulative days in any calendar year, except that:

(1) a child may remain in voluntary placement for an additional 180 consecutive days when, following written notice by the Social Services Department to the Juvenile Court, including redocumentation of the findings required in Subsection (b) of this Section, the Juvenile Court orders that the additional period of voluntary placement is in the best interest of the child;

(3) in no event shall a child remain in voluntary placement for a period in excess of three hundred and sixty (360) consecutive days or for more than three hundred sixty (360) days in any two (2) consecutive calendar years; and

(4) voluntary placement shall not be considered an abandonment by a parent or other extended family member.

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15.52 Rights During Voluntary Placement.

(a) Any parent, guardian, or custodian whose child is in voluntary placement shall have the following rights with respect to the child:

- (1) the right of reasonable visitation with the child;
- (2) the right to be informed of changes in the child's school or foster care home;
- (3) the right to make decisions on all non-emergency medical care provided to the child; and
- (4) the right to demand in writing to the Social Services Department at any time, and to obtain within seventy-two (72) hours of the demand, the return of the child; *provided* that any person authorized to enforce the provisions of this Ordinance may prevent the return by filing a petition with the Juvenile Court alleging neglect, abuse, need of supervision, or delinquency and obtaining temporary custody of the child before the expiration of seventy-two (72) hours.

15.53 Adoptive Certifications and Investigations.

(a) Before a person may adopt a child, he or she must be certified by the Juvenile Court as eligible to adopt children. Certification may be issued or denied after an adult desiring to adopt a child files a petition for certification with the Juvenile Court and after the Social Services Department conducts an adoptive investigation and files a report with the Court.

(b) The adoptive investigation shall include but not be limited to the following factors:

- (1) parenting fitness;
- (2) tribal affiliation, if any;
- (3) family history;
- (4) mental and physical health conditions;
- (5) financial condition;

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(6) criminal records check; and

(7) any other factor bearing on the issue of fitness of the person as a prospective adoptive parent.

(c) Within ninety (90) days of the date a petition for certification is filed, the Social Services Department shall file a written report with the Juvenile Court, based on its adoptive investigation, which shall include a recommendation for or against certification along with the reasons supporting the recommendation.

(d) If the person seeking certification to adopt a child objects to the report, he or she may request another investigation and report, at his or her sole cost and expense.

(e) A person shall be certified eligible to adopt a child if, based on the investigations, reports, and recommendations, the Juvenile Court finds that the person is fit to parent a child. A person shall not be certified to adopt a child where a criminal record check:

(1) reveals a felony conviction at any time by a court of competent jurisdiction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery; or

(2) reveals a felony conviction within the past five (5) years by a court of competent jurisdiction for physical assault, battery, or a drug-related offense.

(f) The certification of eligibility to adopt children remains in effect for one (1) year. Upon the filing of a petition by a person who has been certified under this Section affirming that no material changes have occurred that adversely affect his or her eligibility to adopt, the Juvenile Court may extend the effectiveness of the certification for an additional one (1) year.

(g) Any applicant who is denied certification may appeal the denial of certification in the manner provided for taking appeals under the Klamath Rules of Appellate Procedure. If on appeal the denial of certification is upheld, the applicant may not reapply for certification for one (1) year from the date of denial.

(h) The identity of a prospective adoptive parent shall not be revealed to any child eligible for adoption until a decision to place that child with the prospective adoptive parent is made.

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(i) Immediately after the identity of a child to be adopted is known, the Juvenile Court shall order the Social Services Department to conduct a preadoptive investigation of the child. Such preadoptive investigation shall include, but not be limited to:

- (1) the suitability of the child's placement with a particular prospective adoptive parent if one is available;
- (2) the physical and mental condition of the child, including any special needs;
- (3) the preference of the child, if he or she is capable of indicating a preference;
- (4) whether the parent-child relationship has been terminated, voluntarily or involuntarily, and the circumstances of such termination;
- (5) whether the natural parent will consent to the adoption of the child; and
- (6) tribal membership or eligibility for tribal membership of the child.

(j) Within two (2) months of the investigation of a child to be adopted, the Social Services Department shall file a written report with the Juvenile Court recommending whether the child's adoption generally, or by a particular certified prospective adoptive parent, will be suitable. Where a particular prospective adoptive parent is identified, the Department's report shall update the adoptive investigation to ensure that no material changes have occurred to affect adversely the eligibility of that person to adopt the child.

(k) The identity of the child to be adopted or the child's natural parent shall not be revealed to any prospective adoptive parent until a decision to place the child is made unless otherwise ordered by the Court for good cause shown. Thereafter, the child's identity may be revealed to a certified prospective adoptive parent.

15.54 Adoption.

(a) An adoption proceeding may be initiated:

(1) by the filing of a petition with the Juvenile Court by any adult who has been certified under this Ordinance as eligible to adopt a child, *provided* that any adult desiring to adopt a Klamath child also must qualify under the adoptive placement preferences of the Klamath Tribes set

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forth in this Ordinance unless the Tribal Council of the Klamath Tribes has, by resolution, altered the placement preferences set forth in this Ordinance; or

(2) by a state desiring to transfer an adoption proceeding involving a Klamath child pursuant to the Indian Child Welfare Act and/or the Indian Child Welfare Act Agreement between the State of Oregon and the Klamath Tribes.

(b) Any known living biological parent of a child who has acknowledged parentage must consent in writing to the adoption of his or her child, or, if all parental rights have been legally terminated or there are no known surviving biological parents, the Child Welfare Placement Board must so consent.

(c) A consent to adoption shall be signed by the person consenting to the adoption or in the case of a consent by the Child Welfare Placement Board, by the Chairman of the Placement Board pursuant to a resolution from the Board, in the presence of the Juvenile Court. The consent shall be witnessed and signed by the Judge of the Juvenile Court and the Tribal Court clerk and filed with the Court. Any resolution of the Child Welfare Placement Board authorizing a consent to adoption by the Chairman of the Board also shall be so filed.

(d) The Juvenile Court may waive the requirement of the consenter's presence in Court for good cause shown. If the consenter's presence is waived, the consent must be executed and acknowledged before a judge or notary public not less than ten (10) days after the birth of the child to be adopted and filed with the Court. The Court also will require proof that the consenter understood his or her parental rights and the consequences of his or her consent.

(e) The Juvenile Court may accept or reject a request by the consenter to withdraw his or her consent to an adoption based on the best interest of the child up until the entry of a final order of adoption.

(f) No consent to adoption shall be signed until at least ten (10) days after the birth of the child to be adopted.

(g) During any such proceeding conducted in English, the Juvenile Court shall provide an interpreter to a non-English speaking person consenting to an adoption.

(h) If the child is at least twelve (12) years old, the child must appear before the Juvenile Court and consent in writing to such adoption.

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(i) Within one (1) year after the entry of a final order of adoption, the Juvenile Court may order that a consent to an adoption be withdrawn upon proof beyond a reasonable doubt that the consent was obtained by fraud, duress, or force. The Court shall issue its order allowing or not allowing the consent to be withdrawn after reasonable notice and an opportunity to be heard has been given to the adoptive parents, the child if the Court determines that the child is capable of expressing himself or herself, the agency that placed the child, and any other persons the Court deems necessary. The order is a final order for purposes of appeal.

(j) If the consent to adoption is withdrawn under this Section, a petition for termination of parental rights may be filed, the child may be returned to the parent, and/or the child may be placed in foster care pending a permanent placement.

(k) After the Juvenile Court has heard all the facts, and based on the best interests of the child and the Klamath Tribes, the Juvenile Court may:

(1) deny the request for adoption and order foster care or other long term placement of the child;

(2) issue a temporary order for preadoptive placement of the child with the prospective adoptive parents or another suitable family for not more than twelve (12) months to allow the adoptive family situation to be observed pending final action by the Court; or

(3) enter an order granting the adoption of the child and requiring that such order be entered in the records of the Klamath Tribes, the Bureau of Indian Affairs, and the Bureau of Vital Statistics of the State of Oregon.

(l) Upon entry of a final order permitting the adoption, the adoptive parents succeed to all rights and responsibilities of the biological parents, whose rights thereafter are terminated forever. Neither the adopted child nor his or her biological parents may inherit from each other, except for trust property that passes by blood descent.

(m) The adoption of a Klamath child shall not affect the child's status as a member or his or her enrollment eligibility. An adopted child shall assume the surname of the person by whom he or she is adopted, unless the Juvenile Court orders otherwise, and shall be entitled to the same rights as the natural children of the adoptive parent. Adoption does not confer tribal membership status on an adopted child who otherwise would not be eligible for membership.

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(n) The Juvenile Court may assess such fees on an adoptive parent as are necessary to cover the costs of services rendered in connection with the adoption proceedings.

15.55 Special Needs. Special needs determined under 42 U.S.C. Section 473(c)(1) shall be based on evidence by order from a court with competent jurisdiction.

15.56 Permanent Guardians.

(a) As set forth in this Ordinance, where unification of a Klamath child with his or her parents is not possible, long term placement is the preferred approach over adoption so long as such placement is in the best interest of the child. Any adult may petition for permanent and self-sustaining guardianship of a child by filing a written petition and consent stating:

- (1) the full name, birth date, birthplace, and marital status of the child, if known;
- (2) the child's membership or eligibility for membership in the Klamath Tribes;
- (3) the name, age, place of and duration of residence, occupation, and relationship to the child of the prospective guardian;
- (4) the facts supporting the grounds for permanent guardianship;
- (5) the reasons supporting the jurisdiction of the Juvenile Court; and
- (6) a description and statement of value of all real and personal property owned by or held in trust for the child.

(b) Notice of a hearing on the petition shall be served in the manner provided by this Ordinance on the child, parent, custodian, prospective guardian, and any other person the Juvenile Court orders to be served.

(c) The Juvenile Court shall hold a hearing, at which the prospective guardian must be present, to determine if it is in the child's best interest to be placed in a permanent guardianship with the prospective guardian. The Court shall determine, among other things:

- (1) the suitability of the child for permanent guardianship;

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- (2) the suitability of the prospective guardian;
 - (3) the validity of any written consents; and
 - (4) whether the consent of any person who has received notice of the hearing and not appeared should be waived.

(d) Upon clear and convincing evidence, the Juvenile Court may order a permanent guardianship if it is in the child's best interest and the child:

- (1) has been abandoned by his or her parents;
- (2) has been abused, neglected, or adjudged to be in need of supervision and the Court finds that the reasons for his or her status will not change in the foreseeable future even though reasonable efforts to change the situation or causes of his or her status have been made by the Social Services Department or other social services agency;
- (3) has been placed in the care of others either by an order of the Juvenile Court or otherwise and any of the following conditions exist:
 - (A) the child has lived for an extended period of time in the home of the proposed guardian;
 - (B) the parent-child relationship has disintegrated;
 - (C) a psychological parent-child relationship exists between the proposed guardian and the child; or
 - (D) the child is capable of expressing a preference and prefers to live with the proposed guardian; or
 - (E) is not adoptable, and termination of the parental rights is not in the child's best interest.

(e) The Juvenile Court may appoint any adult, including a relative or foster care parent, as permanent guardian over the property and/or person of a child. Appointment of a non-Indian as

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guardian for a Klamath child must be approved by the Child Welfare Placement Board and recommended by the Social Services Department.

(f) A permanent guardian has all rights and responsibilities of a parent, including, but not limited to the child's protection, education, care and control, custody and decision-making, subject to any limitations on those rights and responsibilities provided for in the order of the Juvenile Court, *provided* that no guardian may dispose of any of the child's real or personal property without prior approval of the Court.

(g) A child's inheritance rights from and through his or her parents are not affected by the creation of a permanent guardianship.

(h) Upon the request of the Juvenile Court, the guardian shall submit a written report on all actions of the guardian taken on behalf of the child or the child's estate.

(i) Any guardianship automatically terminates when the child reaches eighteen (18) years of age.

(j) Upon application of the guardian or the child for termination of the guardianship over the child's person or property, or upon its own motion, the Juvenile Court may terminate the guardianship.

(k) The Juvenile Court may appoint a special guardian to sign on behalf of a child deeds, contracts, or other documents.

15.57 Pre-Termination Report.

(a) In every proceeding for the termination of parental rights, the Juvenile Court shall order that the Social Services Department or other designated person or agency prepare a pre-termination report within ten (10) business days of the date of the filing of the petition.

In preparing the pre-termination report, the Social Services Department shall interview and consult with the child and his or her attorney, lay advocate, or guardian ad litem; the child's parent(s); members of the child's extended family; all involved social services agencies and workers; tribal health, education, and enforcement personnel; and any other person having prior contacts with the child and his or her parent(s), guardian, or custodian. The Social Services Department also shall review prior court and law enforcement records of the child and his or her parent(s). The pre-

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termination report shall be in writing and contain the history of the parent(s) and the child, a summary of all sources of information consulted, and recommendations to the Juvenile Court by the Social Services Department or other designated person or agency as to whether the parent(s) rights should be terminated.

(b) A parent whose rights may be terminated may file a written report with the Juvenile Court.

(c) All reports shall be filed with the Juvenile Court at least two (2) days before the scheduled termination hearing. The Social Services Department also must serve contemporaneously a copy of the report on the parent(s) whose rights may be terminated and their counsel or advocate, the child (if the child has attained the age of fourteen (14)) and his or her guardian ad litem, and the child's guardian or custodian.

15.58 Involuntary Termination of Parental Rights.

(a) Where reunification of a Klamath child with his or her parent is not possible, removal and long term placement without termination of parental rights is the preferred approach. As a last resort, the Juvenile Court may terminate all rights of a parent to a child if it finds that termination of parental rights is clearly in the best interest of the child and one or more of the following factors are present:

- (1) the parent abandoned the child;
- (2) the child suffered physical injuries willfully inflicted by his or her parent(s) that cause or caused a substantial risk of death, disfigurement, or impairment of bodily functions;
- (3) the parent subjected the child to sexual abuse;
- (4) the child is a neglected or abused child;
- (5) the parent repeatedly refused and neglected to give the child proper care, protection, subsistence, education, or health care, even though the parent was financially able to do so;
- (6) the child is a ward of the court because the parent refused to comply with a Court-ordered treatment plan or failed to provide proper care and protection for the child;

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(7) the parent suffers from an emotional or mental illness or deficiency of such duration and nature as to render the parent unable to care for the physical, mental, and emotional needs of the child for extended periods of time and such inability threatens the health, safety, and welfare of the child;

(8) the parent abuses intoxicating liquors and/or prescription drugs and/or uses illegal substances or drugs, the abuse and use of which threatens the health, safety, and welfare of the child;

(9) the parent is imprisoned for a period of time that is of such a duration that it undermines the parent's effectiveness and is detrimental to the health, safety, and welfare of the child;

(10) a court of competent jurisdiction has determined that the parent has:

(A) subjected the child to aggravated circumstances (as defined in applicable federal, state, or tribal law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(B) committed murder of another child of the parent;

(C) committed voluntary manslaughter of another child of the parent;

(D) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter of another child of the parent; or

(E) committed a felony assault that resulted in serious bodily injury to the child or another child of the parent;

(11) rehabilitation of the parent according to a Court-ordered treatment plan is unsuccessful;

(12) the parent has failed to provide a home or reasonable substitute physical care and maintenance for one (1) year;

(13) considering the age of the child and the circumstances of the case, the parent

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has failed to maintain regular visitation or other contact with the child over a period of one (1) year;
and/or

(14) the parental rights of the parent to another child of the parent have been terminated involuntarily.

(b) Subject to the exceptions in Subsection (c) of this Section, the Social Services Department shall file a petition in the Juvenile Court, or if such petition has been filed by another party, seek to be joined as a party to the petition, to terminate the parental rights of a parent:

(1) who has been found by a court of competent jurisdiction to have committed one of the felonies listed in Subsection (a)(10) of this Section, in which case the petition to terminate parental rights shall be filed within sixty (60) days of a judicial determination that reasonable efforts to reunify the child and parent are not required; or

(2) whose child has been in foster care for fifteen (15) of the most recent twenty-two (22) months; or

(3) whose child has been determined to be an abandoned infant, in which case the petition must be filed within sixty (60) days of the judicial determination of abandonment.

(c) The Social Services Department may elect not to file or join in a petition to terminate the parental rights of a parent under Subsection (b) of this Section if:

(1) the child is being cared for by a relative;

(2) the Department has documented in the child's case plan, which shall be available for Juvenile Court review, compelling reasons for determining that filing such a petition would not be in the best interest of the child; or

(3) the Department has not provided to the family, consistent with the time period in the permanency plan, services that the Department deems necessary for the safe return of the child to the home, when reasonable efforts to reunify the family and make it possible for the child to safely return home are required to be made by the permanency plan.

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15.59 Involuntary Termination Hearing.

(a) Upon notice to the child, the child's attorney or guardian ad litem, and the child's parent, guardian, or custodian, the Juvenile Court shall conduct a termination hearing for the sole purpose of determining whether parental rights should be terminated. Notice shall be given at least thirty (30) days before the date of termination hearing in the same manner required by this Ordinance for other hearing notices and, where notice is accomplished by mail, if the return receipt is not received within twenty (20) days, the Court may deem the child abandoned. The Juvenile Court shall conduct the hearing in the same manner required by this Ordinance for the conduct of other hearings held by the Court, and the parties shall be entitled to the same basic rights as provided to other parties to proceedings in the Court.

(b) At the hearing, in accordance with the Klamath Tribes' Tribal Court Ordinance, the parent may be represented by a lay advocate or professional attorney at their own expense.

(c) In determining whether the rights of a parent shall be terminated, the Juvenile Court shall give primary consideration to the best interest of the child based on the child's physical, mental, and emotional condition and needs.

(d) At the hearing, the Juvenile Court may:

(1) decide not to terminate the parental rights even though conditions of neglect or abuse exist and shall make such other orders as are consistent with the best interests of the child and this Ordinance; or

(2) terminate the parental rights of one or both parents and order that the guardianship or legal custody of the child be transferred in accordance with the placement preferences established in this Ordinance.

(e) The Juvenile Court shall issue a written order detailing its decision, the reason for the decision, and the disposition of the child. Such an order is a final order for purposes of appeal.

(f) A certified copy of the order of the Juvenile Court shall be furnished to the parent, the Bureau of Indian Affairs, and the individual or individuals to whom the guardianship or custody of the child is transferred.

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15.60 Voluntary Termination of Parental Rights.

- (a) A parent may voluntarily relinquish his or her parental rights with respect to a child if:
- (1) the Juvenile Court has informed the parent of his or her basic rights under this Ordinance;
 - (2) a written report submitted to the Juvenile Court by the Social Services Department indicates that services and counseling have been offered to the parent, that the consequences of the parent's actions have been fully explained to and are understood by the parent, and that the voluntary termination is in the best interest of the child;
 - (3) the Juvenile Court provides a non-English speaking parent with an interpreter during all proceedings, meetings, and interviews conducted in English;
 - (4) the parent relinquishes his or her rights in writing before a notary and in person before the Juvenile Court. The Juvenile Court may waive actual presence if it finds the parent must be absent from Klamath Tribal Lands for a prolonged period, the parent is physically incapacitated or ill, or any other reason the Court considers good cause.
- (b) If the Juvenile Court has reasonable doubt about the voluntariness of the relinquishment, the parent's state of mind, or about the parent's ability to understand the consequences of the termination, the Court may postpone its decision for a specified period and order that:
- (1) the child be placed in temporary foster care for a period of not more than thirty (30) days to allow the parent to reconsider his or her decision;
 - (2) the parent seek legal advice at his or her own expense; and/or
 - (3) the parent submit to psychological counseling culminating in a written evaluation of the parent.

At the end of the specified period, the Juvenile Court shall resume the voluntary termination proceeding.

- (d) If one parent elects to voluntarily relinquish his or her parental rights and the other

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parent is unknown, missing, or not willing to relinquish parental rights, and grounds for a non-voluntary termination exist, a petition for a non-voluntary termination hearing as to the unknown, missing, or unwilling parent may be filed and termination proceedings begun.

(e) The Juvenile Court shall issue a written order either rejecting a voluntary relinquishment of parental rights or terminating the parental rights and making an appropriate order for the disposition of the child. Such an order is a final order for purposes of appeal.

(f) A certified copy of the order of the Juvenile Court shall be furnished to the parent, the Bureau of Indian Affairs, and the individual or individuals to whom the guardianship or custody of the child is transferred.

CONFIDENTIALITY AND JUVENILE RECORDS

15.61 Confidentiality in Juvenile Proceedings Generally. Except as otherwise expressly provided for in this Ordinance or the Klamath Tribal Code, all records and reports of the Social Services Department and the Juvenile Court are confidential and not accessible for public inspection.

Such records and reports shall not be disclosed, without the consent of the individual and the Juvenile Court, to any person other than the Juvenile Court and its judge and staff, an employee of the Social Services Department, parties to the proceedings, other authorized state or federal government employee who has a need to know the information in performance of such employee's official duties, or other person determined by the Court to have a direct interest in the proceedings upon a determination by the Juvenile Court that such release is in the best interest of the child.

15.62 Confidentiality of Adoption Records.

(a) Except as otherwise expressly provided for in this Ordinance or the Klamath Tribal Code, all records, reports, proceedings, documents, and orders filed, prepared for, or issued by the Juvenile Court in an adoption case are the confidential, permanent records of the Court and shall not be available for release to or inspection by any person; *provided* that the Juvenile Court may authorize the release of information in such records for legitimate purposes of the Klamath Tribes.

(b) Information contained in adoption files and records may be released if a petition seeking release is filed with the Juvenile Court by the adopted person who is eighteen (18) years of age or older or by a person other than the adopted person who has petitioned for such release upon a showing of good cause. In either case, no information shall be released until the Juvenile Court

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gives actual and confidential notice to the biological parent that the petition for release of information has been filed, and such parent consents in writing to the release of information. The Juvenile Court may waive the necessity of the biological parent's consent if the parent, at the time of voluntary relinquishment of parental rights or involuntary termination of parental rights or any time thereafter executes and files with the Juvenile Court a written consent authorizing the Juvenile Court to release information in the future, or if the biological parent cannot be located after a good faith attempt to locate him or her is made or if the Court determines that the need for information outweighs the biological parent's right to privacy.

(c) The Juvenile Court may refuse to divulge the biological parent's name but may release other information if the information is not likely to lead to the discovery of the parent's name.

15.63 Expungement. When a person who has been before the Juvenile Court in a proceeding under this Ordinance reaches twenty-one (21) years of age, the Juvenile Court shall order the Clerk and the Social Services Department to seal the records of such proceeding.

CHILD ABUSE AND NEGLECT

15.64 Duty to Report Child Abuse and Neglect. Any licensed physician, dentist, chiropractor, nurse, physician's assistant, or other health care provider treating a child; any law enforcement officer, probation officer, or juvenile counselor; any school teacher, counselor, teacher's aid, or bus driver; any social worker, court appointed special advocate, child day care worker, headstart teacher, public assistance worker, elected tribal official, or tribal employee acting in his or her official capacity; or any other person knowing or having reasonable cause or suspicion to believe that a child is an abused or a neglected child shall report the matter immediately to:

- (a) an appropriate law enforcement agency; or
- (b) the Social Services Department.

15.65 Reporting and Investigation Procedures.

(a) When a Klamath Tribes law enforcement officer or the Social Services Department receives an initial report from any person that reasonably believes a child is abused or neglected, the receiving agency or department shall immediately notify appropriate officials of the other agency or department and shall submit a copy of the written intake required under Subsection (c) of this

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Section to the other agency or department. When appropriate, the receiving agency or department shall coordinate efforts with the State of Oregon child welfare agency that is appointed to receive reports of child abuse or neglect.

(b) Within thirty-six (36) hours, excluding weekends and Klamath tribal holidays, after receiving an initial report of child abuse or neglect, the receiving agency or department shall prepare a written intake report including, but not be limited to the following information:

- (1) the name, address, age, and sex of the child that is the subject of the abuse or neglect;
- (2) the grade and school in which the child is currently enrolled;
- (3) the name and address of the child's parents, guardian, custodian, or other person responsible for the child's care;
- (4) the name and address of the alleged perpetrator and their relationship to the child;
- (5) the name and address of the person who made the report including their relationship to the child;
- (6) a brief narrative as to the nature and extent of the child's injuries or circumstances, including but not limited to any evidence of previous injuries and any previously known or suspected abuse or neglect of the child or the child's siblings and the suspected dates of the abuse or neglect; and
- (7) any other information that might be helpful to the investigation of child abuse or neglect, including but not limited to information useful in establishing the cause of the injuries and the identity of the person or person responsible for the injuries.

(c) The recipient of the report also shall take immediate steps to insure prompt investigation of the report to determine if there is probable cause to believe that the allegations are true and to protect the health or welfare of the alleged abused or neglected child, as well as that of any other child who may be in danger of abuse or neglect by the same person. All persons conducting an investigation authorized or required by this Ordinance shall conduct interviews in a manner which protects the child from unnecessary trauma and embarrassment.

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(d) Upon completion of the investigation of any report of alleged child abuse or neglect, the involved agencies and departments shall prepare a final written report on the allegations.

(e) In any proceeding alleging neglect or abuse under this Ordinance where the written report prepared by a law enforcement agency or the Social Services Department in accordance with this Section is sought to be introduced into evidence, the report, its contents, or any other facts related to the condition of the child who is the subject of the report shall not be excluded on the grounds that the matter is or may be the subject of a physician-patient privilege or similar privilege or rule against disclosure.

(f) The identity of any person making an initial report of child abuse or neglect shall not be disclosed without the consent of such person to any other person other than the Juvenile Court or an employee of the Social Services Department, law enforcement agency, or other state or federal government employee who has a need to know the information in performance of such employee's duties.

(g) Anyone reporting an instance of alleged child neglect or abuse or participating in a judicial proceeding brought as a result of a report required by this Ordinance is presumed to be acting in good faith and shall be immune from civil or criminal liability that might otherwise be incurred or imposed by the law, unless the person acted in bad faith or with malicious purpose.

15.66 Waiver of Parental Consent.

(a) Photographs, x-rays, medical exams, psychological examinations, and such interviews of a child alleged to have been subject to abuse or neglect shall be allowed without parental consent if the law enforcement agency or the Social Services Department have reason to believe the child has been subjected to abuse or neglect.

(b) In any case where there is a reason to believe that a child has been subject to abuse or neglect, the law enforcement agency or the Social Services Department may interview the child without first obtaining consent of the parents, guardian, or custodian.

(c) Examinations and interviews of a child shall be conducted under such circumstances and with such safeguards as to minimize additional trauma to the child and, where time permits, shall be conducted with the advise and guidance of the Child Protective Team.

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CHILD PROTECTIVE TEAM

15.67 Establishment of Child Protective Team; Policy; Duties.

(a) The policy of the Klamath Tribes is that each report of abuse and neglect reported to a law enforcement agency or the Social Services Department shall be staffed with a multi-disciplinary team.

(b) There is hereby created the Child Protective Team, a multi-disciplinary team consisting of at least three (3), but not more than seven (7) persons appointed by the Tribal Council of the Klamath Tribes to serve such terms designated at the time of their appointment. Members shall be recruited from groups or professions with special interest or expertise in child welfare and child abuse and neglect, which may include but not be limited to members representative of law enforcement, the Social Services Department, child counseling and adolescent mental health services, other health services, and child welfare agencies. The Tribal Council of the Klamath Tribes may remove members of the Child Protective Team at any time, with or without cause.

(c) The Child Protective Team shall review all suspected cases of abuse or neglect under this Ordinance and make recommendations as to the disposition of a case, including but not limited to preventative services referral, treatment, and other possible disposition actions.

(d) The Child Protective Team shall issue recommendations on each substantiated case. A copy of such recommendations will be submitted to and retained by the Social Services Department and the Juvenile Court. These reports of recommendation shall be kept of record for a period not to exceed seven (7) years from the date of the report.

(e) Records reviewed by the Child Protective Team are confidential and may not be disclosed except as allowed by this Ordinance; *provided* that nothing in this Subsection shall be deemed to prevent such records from being used or introduced in a court proceeding. All participants will be required to sign a confidentiality agreement to this effect prior to serving on the team. A copy of the executed form shall be kept in the records of the Social Services Department.

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CHILD WELFARE PLACEMENT BOARD

15.68 Composition of Child Welfare Placement Board.

(a) The Child Welfare Placement Board shall consist of six (6) members appointed by the Chairman of the Klamath Tribes to serve three (3) year terms, or until their successors are duly appointed. Board members shall be eligible for reappointment

(b) Members of the Child Welfare Placement Board shall have the following qualifications:

- (1) be of good character and habits;
- (2) have a suitable temperament;
- (3) possess knowledge of the Klamath Tribes, including the Tribes' culture, heritage, customs, and traditions;
- (4) be at least eighteen (18) years of age; and
- (5) abstain from unlawful drugs while serving on the Board;

(c) No person shall be appointed to serve on the Child Welfare Placement Board where a record check:

(1) reveals a felony conviction at any time by a court of competent jurisdiction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery; or

(2) reveals a felony conviction within the past five (5) years by a court of competent jurisdiction for physical assault, battery, or a drug-related offense.

(d) Any member may be removed from the Child Welfare Placement Board by the Chairman of the Klamath Tribes for good cause after a majority of the members of the Child Welfare Placement Board recommends said removal. "Good cause" includes but is not limited to dereliction of duty, negligence, malfeasance in office, or failure to attend two Board meetings within a six (6)

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month period without justification. A member may resign at any time from the Child Welfare Placement Board by giving written notice to the Chairman of the Klamath Tribes. Resignations shall become effective at the time specified therein; the acceptance of such resignation shall not be necessary to make it effective. Any vacancy on the Child Welfare Placement Board, howsoever caused, will be filled for the unexpired portion of that term by the Chairman of the Klamath Tribes according to the appointment procedures prescribed herein.

15.69 Duties and Powers of the Child Welfare Placement Board.

(a) The Child Welfare Placement Board shall serve as a general advisory board to the Klamath Tribes on child custody and placement matters. As such, the Child Welfare Placement Board shall review child custody placements involving Klamath children and, as requested by the Social Services Department, , make recommendations regarding placements of Klamath children. In addition, the Child Welfare Placement Board may make recommendations concerning tribal policies and practices with respect to Klamath children to the Social Services Department and to the Tribal Council of the Klamath Tribes. The Child Welfare Placement Board shall undertake such additional duties as requested by the Tribal Council.

(b) A member shall disqualify himself or herself from making any Child Welfare Placement Board decision related to a proceeding when a child or party in that proceeding is a relative of the member by marriage or blood in the first or second degree or lives in the household of the member.

(c) Any member may be disqualified from making any Child Welfare Placement Board decision by the affirmative vote of the Board if the Board reasonably believes that the member is biased, has a personal or financial interest in the matter, or otherwise has a conflict of interest related to the matter under consideration.

15.70 Chairman; Meetings of the Child Welfare Placement Board; Quorum. The Child Welfare Placement Board may elect a Chairman from among themselves. The business of the Board shall be conducted at meetings of the Board duly called and noticed at which a quorum is present. A quorum shall consist of at least four (4) members. Any substantive action of the Board must be taken by the affirmative vote of at least four (4) members and must be recorded in a written resolution. The Chairman of the Child Welfare Placement Board or any two (2) of its members may call a meeting. Notice of a meeting must be given to all members at least two (2) days before a meeting.

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APPROVAL, LICENSURE, AND CERTIFICATION OF FOSTER CARE HOMES

15.71 Authority to Approve, Certify, and License Foster Care Homes.

(a) The Social Services Department is authorized to certify and license foster care homes.

(b) Subject to approval by the Tribal Council of the Klamath Tribes, the Department shall develop written regulations governing the certification and licensure of foster care homes and foster care parents and families that meet all applicable federal minimum standards of character and suitability and which shall be reasonably in accord with recommended standards of national organizations concerned with standards for foster care homes. Such regulations shall include procedures for criminal records checks for any prospective foster care parent and prohibit certification and licensure of a foster care parent where a record check:

(1) reveals a felony conviction at any time by a court of competent jurisdiction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery; or

(2) reveals a felony conviction within the past five (5) years by a court of competent jurisdiction for physical assault, battery, or a drug-related offense.

(c) The Department may recognize State of Oregon foster care home licensing as meeting the foster care home requirements of the Klamath Tribes.

15.72 List of Approved Foster Care Homes. The Social Services Department shall provide the Child Welfare Placement Board, Tribal Council, and the State of Oregon with a list of foster care homes that have been approved, certified, and licensed by the Klamath Tribes and shall update the list on a quarterly basis.

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MISCELLANEOUS

15.73 Civilly Prohibited Activities.

- (a) It is civilly prohibited for any adult person to:
 - (1) neglect or abuse a child;
 - (2) fail to report a neglected or abused child;
 - (3) detain a child in an improper facility;
 - (4) make a false statement or misrepresentation of material fact in any report, consent, affidavit, application, or petition required or authorized to be made herein;
 - (5) disobey any order of the Juvenile Court issued in connection with a proceeding herein;
 - (6) reveal improperly confidential information or records about any proceedings involving a child; and/or
 - (7) place or attempt to place improperly for adoption a Klamath Child.
- (b) It is civilly prohibited for any child to:
 - (1) disobey habitually the reasonable and lawful demands of his or her parent, guardian, or custodian;
 - (2) disobey applicable curfews;
 - (3) run away from home;
 - (4) commit an act prohibited under any law, regulation, ordinance, tradition, or custom of the Klamath Tribes;
 - (5) buy, attempt to buy, receive, possess, or permit himself or herself to be served alcoholic liquor or drugs without a prescription;

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(6) make a false statement or misrepresentation of material fact in any report, consent, affidavit, application, or petition required or authorized to be made herein; or

(7) disobey any order of the Juvenile Court issued in connection with a proceeding herein;

(8) fail to attend school when lawfully required to do so.

15.74 Civil Liability.

(a) Any Klamath Tribal law enforcement officer or other authorized person may bring an action in the name of the Klamath Tribes against any person engaged in the activities prohibited by this Ordinance and recover monetary damages for personal injuries, damage to real or personal property, restitution, civil fines not exceeding five thousand dollars (\$5,000.00) per prohibited act, attorney fees, court costs, injunctive relief, and/or other relief, including but not limited to orders for:

(1) the parent, guardian, or custodian to pay the reasonable cost or part of the cost of support and treatment of the child if the child is found to be abused, neglected, in need of supervision, or delinquent, or the child is placed with or in an foster care home or other facility;

(2) the child, parent, guardian, and/or custodian to perform Klamath community service;

(3) the child, parent, guardian, and/or custodian to seek and receive counseling and/or medical treatment; and

(4) the child, parent, guardian, and/or custodian to receive appropriate education.

(b) For good and sufficient cause found, the Juvenile Court may exclude from Klamath Tribal Lands any person who engages in activities prohibited by this Ordinance to the extent such exclusion is not inconsistent with the Klamath Tribal Code, Constitution and By-Laws of the Klamath Tribes, or other Klamath tradition or custom.

15.75 Appeals.

(a) Any party may appeal from a judgment of the Juvenile Court in the manner provided

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by the Klamath Rules of Appellate Procedure. The appeal shall be upon the files, records, and transcripts of evidence before the Juvenile Court. The name of the child shall not appear in the record on appeal.

(b) If an order appealed from grants the legal custody of the child to, or withholds it from, one or more of the parties to the appeal, the appeal shall be heard at the earliest practicable time.

(c) The Klamath Tribes shall furnish a child who files a Notice of Appeal with a transcript of the proceedings, or as much of it as requested, without cost, upon the filing of an affidavit that the child or the person that is legally responsible for the care and support of the child is financially unable to purchase the transcript.

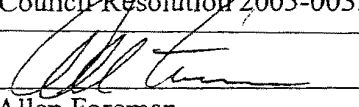
15.76 Amendments. This Ordinance may be amended by the Klamath Tribes General Council pursuant to duly adopted Resolution.

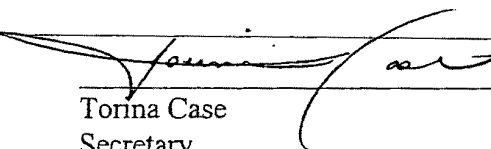
15.77 Sovereign Immunity. Except as expressly and specifically waived by a resolution of the Klamath Tribes, the Klamath Tribes shall be immune from suit, and their officers and employees also shall be immune from suit for liability arising from the performance of their official duties in administering and enforcing this Ordinance.

15.78 Severability. If any part or application of this Ordinance is held invalid, the remainder or its application to other situations or persons shall not be affected.

Certification

We, the undersigned, Tribal Council Chairman and Secretary of the Klamath Tribes, do hereby certify that at a Regular General Council meeting held on the 20th day of AUGUST, 2005 with a quorum present, the General Council took action and duly adopted this Ordinance as Amended by a vote of 52 for, 0 opposed, and 6 abstentions by General Council Resolution 2005-003.


Allen Foreman
Chairman
The Klamath Tribes


Torina Case
Secretary
The Klamath Tribes

Date Adopted: 11/25/00

Most Recent Amendment: 8/20/05

**JUVENILE ORDINANCE
KLAMATH TRIBAL CODE
Title 2 Chapter 15**

Legislative History:

Originally adopted by Klamath Tribes General Council on November 25, 2000 pursuant to General Council Resolution # 2000-01

Amended on August 20, 2005 pursuant to General Council Resolution #2005-003.