

# **TITLE 6: JUVENILE CODE**

## **CHAPTER 1 Purpose and Construction**

### **§ 6.1.01 Purpose and Construction**

It is the purpose of this Juvenile Code to secure for each child coming before the Tribal Juvenile Court such care, guidance, and control, preferably in his own home, as will serve his welfare and the best interests of the Makah Indian Tribe; to preserve and strengthen family ties whenever possible; to preserve and strengthen the child's cultural and ethnic identity wherever possible; to secure for any child removed from his home that care, guidance, and control as nearly equivalent as that which he should have been given by his parents to help him develop into a responsible, well-adjusted adult; to improve any conditions or home environment which may have contributed to his delinquency; and at the same time, to protect the peace and security of the community and its individual residents from juvenile violence or law-breaking. To this end, this Code shall be liberally construed.

## **CHAPTER 2 Definitions**

For the purpose of this Title, the words and phrases shall have the meanings respectively ascribed to them.

### **§ 6.2.01 "Abandon"**

When a parent leaves a child without communication or fails to support a child and there is no indication of the parent(s) willingness to assume his parental role(s) for a period exceeding one (1) year.

### **§ 6.2.02 "Adult"**

A person eighteen (18) years of age or older.

### **§ 6.2.03 "Juvenile Court"**

The Makah Tribal Court when exercising jurisdiction under this Code.

### **§ 6.2.04 "Juvenile Court Judge"**

Any Judge of the Makah Tribal Court when exercising jurisdiction under this Code.

**§ 6.2.05 “Custodian”**

One who has physical custody of a minor and who is providing food, shelter and supervision to him.

**§ 6.2.06 “Delinquent Act”**

An act committed by a minor, which, if committed by an adult, is designated a crime under the Makah Tribal Law and Order Code.

**§ 6.2.07 “Detention”**

The placement of a minor in a physically restrictive facility.

**§ 6.2.08 “Guardian”**

A person other than the minor’s parent who is by law responsible for that minor.

**§ 6.2.09 “Juvenile Offender”**

A person who commits a delinquent act prior to his eighteenth (18th) birthday.

**§ 6.2.10 “Least Restrictive Alternative”**

This term in the Code directs the Court to select the least drastic method of achieving its goal; the restrictions placed on the child must be reasonably related to the Court’s objectives and must be the least restrictive way of achieving that objective.

**§ 6.2.11 “Minor”**

- (a) (a) A person under eighteen (18) years of age.
- (b) A person eighteen (18) years of age or older who has been arrested or against whom a complaint has been filed in the Juvenile Court prior to his eighteenth birthday.
- (c) A person eighteen (18) years of age or older who is under the continuing jurisdiction of the Juvenile Court.

**§ 6.2.12 "Minor-in-Need-of-Care"**

A minor who:

- (a) Has no parent, guardian or custodian available and willing to care for him; or
- (b) Has been subject to injury, sexual abuse, or negligent treatment or maltreatment by a person who is legally responsible for the minor's welfare under circumstances which indicate that the minor's health, welfare and safety are harmed thereby. "Negligent treatment or maltreatment" shall mean an act or omission which evinces a serious disregard or consequences of such magnitude as to constitute a clear and present danger to the minor's health, welfare or safety; or
- (c) Has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his parent, guardian or custodian necessary for his health and well being; or
- (d) Has been committing delinquent acts as a result of parental pressure, guidance or approval.

**§ 6.2.13 "Shelter Care"**

The temporary care of a minor in a physically unrestrictive facility.

**§ 6.2.14 "Time"**

In computing any period of time prescribed under this Title, the day of the act or event from which the designated time runs shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

**§ 6.2.15 Other Terms**

Any terms not defined in this Title shall be understood to have the meaning described in the definitions sections of the Indian Child Welfare Act, P.L. 95-608, 25 U.S.C. §§ 1901, *et seq.*

## **CHAPTER 3**

### **The Court System**

#### **§ 6.3.01      Establishment**

There is hereby established for the Makah Tribe of the Makah Indian Reservation a Court to be known as the Makah Juvenile Court.

#### **§ 6.3.02      Judge**

The Makah Juvenile Court shall consist of one Judge to be appointed by the Chief Judge from among the Associate Judges of the Tribal Court.

#### **§ 6.3.03      Powers and Duties**

No adjudication upon the status of any child in the jurisdiction of the Juvenile Court shall be deemed criminal or be deemed a conviction of crime unless the Juvenile Court refers the matter to the adult Tribal Court. Therefore, the disposition of a child or of evidence given shall not be admissible as evidence against the child in any proceedings in another court.

#### **§ 6.3.04      Authority of Court**

The Juvenile Court is authorized to cooperate fully with any federal, state, tribal, public or private agency to participate in any diversion, rehabilitation or training programs and to receive grants-in-aid to carry out the purposes of this Code.

#### **§ 6.3.05      Appointment of Probation Officers**

The Tribal Council shall appoint such probation officers as may be required to carry out the work of the probation office under this Title. Probation officers of the adult Tribal Court may serve also for the Juvenile Court, or other persons so appointed may be appointed to serve with or without pay. The probation officers shall be supervised by the Chief of Police.

#### **§ 6.3.06      Duties and Powers of Probation Officers**

The probation officer shall make preliminary inquiries and social studies, and such other investigations as the Judge may direct, and shall keep written records of such investigations or



studies, and shall make reports to the Judge as provided in this Code or as directed by the Judge. Upon the placing of any person upon probation or under protective supervision, the probation officer shall explain to the child, if old enough, and the parents and other persons concerned, what the meaning and conditions of probation or protective custody are, and shall give them the necessary instructions. The probation officer shall keep informed concerning the conduct and conditions of each person on probation or under protective supervision and shall report thereon to the Judge as he may direct. Probation officers shall use all suitable methods to aid persons on probation or under protective supervision to bring about improvements in their conduct or condition, and shall perform such other duties in connection with the care, custody or transportation of children as the Court may require. Probation officers shall have the powers of police officers for purposes of this Juvenile Code but shall, whenever possible, refrain from exercising such powers except in urgent situations in which a regular police officer is not immediately available.

#### **§ 6.3.07 Tribal Officer**

Any tribal police or law enforcement officer may carry out the duties of "officer" under this Title. An officer shall represent the people of the Makah Tribe in all proceedings herein.

#### **§ 6.3.08 Guardian Ad Litem**

The Juvenile Court, under any proceeding authorized by this Title shall appoint, for the purposes of that proceeding, a guardian ad litem for a minor where the Court finds that the minor does not have a natural or adoptive parent, guardian or custodian willing and able to exercise effective guardianship.

## **CHAPTER 4 Shelter Care and Detention Facilities**

#### **§ 6.4.01 Criteria for Detention in Secure Facility**

- (a) A juvenile shall be detained in a secure juvenile detention facility located on the Reservation and approved by the Tribe only if one or more of the following conditions are met:
  - (1) The juvenile is a fugitive from another jurisdiction wanted for an offense that would be a felony if committed by an adult in that jurisdiction; or

- (2) The juvenile is charged with murder, sexual assault, or a crime of violence with a deadly weapon or which has resulted in serious bodily injury; or
  - (3) The juvenile is uncontrollable and has committed a serious physical assault on the arresting officer or on other security personnel during arrest or detention pursuant to this charge; or
  - (4) The juvenile is charged with committing one of the following acts which would be an offense if committed by an adult: battery (5.1.02 ML&O), vehicular homicide (5.1.04 ML&O), abduction (5.1.05 ML&O), rape (5.1.07 ML&O), arson (5.1.10 ML&O), burglary (5.1.11 ML&O) or robbery (5.1.12 ML&O).
- (b) A juvenile may be detained in a secure juvenile detention facility located on the Reservation and approved by the Tribe if the juvenile is charged with committing one of the following acts which would be an offense if committed by an adult: criminal mischief (5.2.07 ML&O), resisting lawful arrest (5.2.06 ML&O), indecent liberties (5.1.08 ML&O); obstructing justice (5.1.11 ML&O); and one or more of the following conditions are met:
- (1) The juvenile is already detained or on conditioned release in connection with another delinquency proceeding; or
  - (2) The juvenile has a demonstrable record of willful failures to appear at juvenile court proceedings; or
  - (3) The juvenile has made an escape attempt and there is reasonable cause to believe the minor will run away or otherwise make himself unavailable for further proceedings; or
  - (4) There is reasonable cause to believe the minor will commit a serious act causing injury or damage to person or property.
- (c) Under no circumstances shall a minor be detained under this Code in an adult jail or lockup outside the boundaries of the Makah Indian Reservation.

#### **§ 6.4.02 Criteria for Placement in Shelter Care Facility**

- (a) A juvenile may be housed in a juvenile shelter care facility on the Reservation approved by the Tribe if one of the following conditions exists:
  - (1) A condition described in Section 6.4.01(b) above is found to exist; or

- (2) The juvenile is alleged to have committed an act other than one listed in 6.4.01(a)( 4) above which would be an offense if committed by an adult; or
  - (3) The juvenile is unwilling to return home or to the home of an extended family member; or
  - (4) The juvenile's parent, guardian, or an extended family member is unavailable, unwilling or unable to permit the juvenile to return to his home; or
  - (5) There is an evident and immediate physical danger to the child in returning home, and all extended family members are unavailable, unwilling, or unable to accept responsibility for temporary care and custody of the juvenile.
- (b) A juvenile may be detained in the secure section of a juvenile shelter care facility on the Reservation approved by the Tribe if:
- (1) A condition described in Section 6.4.01(b) above is found to exist; or
  - (2) The juvenile requests in writing that he be given protection by being confined in the secure confinement area and there is a present and immediate threat of serious physical injury to the juvenile.

#### **§ 6.4.03 Standards**

The Juvenile Court Judge shall prescribe and enforce rules and regulations governing the operation of detention and shelter care facilities. The Juvenile Court Judge may assign the responsibility to another qualified tribal agency. The rules and regulations shall include, but are not limited to, the following: Cleanliness standards, visitation privileges, occupancy standards, provisions for medical and dental care, and provisions for food, furnishings, clothing and toilet articles.

#### **§ 6.4.04 Care and Treatment in Shelter Care and Detention Facilities**

The Juvenile Court Judge shall prescribe and enforce policies and procedures governing the administration of detention and shelter care facilities. Such policies and procedures shall reflect the need to maintain proper educational and religious needs of the minor involved.

## **CHAPTER 5**

### **Jurisdiction**

#### **§ 6.5.01      Original Jurisdiction**

The Juvenile Court shall have exclusive, original jurisdiction of the following proceedings:

- (a) Proceedings in which a minor is alleged to be a juvenile offender unless the Juvenile Court transfers jurisdiction to adult Tribal Court pursuant to the Title. Provided, however, the Juvenile Court shall not have jurisdiction over any fishing or hunting proceedings in which it is alleged that a minor has violated any ordinance or regulation relating to on or off Reservation fishing or hunting; and
- (b) Proceedings in which a minor is alleged to be a minor-in-need-of-care; and
- (c) All other proceedings brought under this Title 6.

#### **§ 6.5.02      Transfer to Adult Tribal Court**

The presenting officer of the minor may file a petition requesting the Juvenile Court to transfer the minor to adult Tribal Court if the minor is sixteen (16) years of age or older and is alleged to have committed an act that would be considered an offense under this Code if committed by an adult.

#### **§ 6.5.03      Transfer Hearing**

The Juvenile Court shall conduct a hearing to determine whether probable cause exists to believe the minor committed the offense alleged and whether jurisdiction of the minor should be transferred to adult Tribal Court. At the transfer hearing, the parties shall have the same rights secured to them under Section 6.6.19 of this Title. The right to summon witnesses shall be available under the procedures of Section 6.6.20 of this Title. The transfer hearing shall be held not more than ten (10) days after the petition is filed. Written notice of the transfer hearing shall be given to the minor and the minor's parent, guardian or custodian at least seventy two (72) hours prior to the hearing.



#### **§ 6.5.04 Factors Considered**

The following factors shall be considered when determining whether to transfer jurisdiction of the minor to adult Tribal Court.

- (a) The nature and seriousness of the offense with which the minor is charged.
- (b) The nature and condition of the minor, as evidenced by his age, mental and physical condition, past record of offenses, and response to past Juvenile Court efforts at rehabilitation.

#### **§ 6.5.05 Circumstances for Transfer**

The Juvenile Court may transfer jurisdiction of the minor to adult Tribal Court if the Juvenile Court finds by clear and convincing evidence that the following circumstances exist:

- (a) There is probable cause to believe that the minor has committed the offense(s) alleged; and
- (b) There are no reasonable prospects for rehabilitating the minor through resources available to the Juvenile Court; and
- (c) The offense(s) allegedly committed by the minor evidences a pattern of conduct which constitutes a substantial danger to the public.

#### **§ 6.5.06 Transfer Orders**

When a minor is transferred to adult Tribal Court, the Juvenile Court shall issue a written transfer order containing reasons for its order. The transfer order constitutes a final order for purposes of appeal.

#### **§ 6.5.07 Transfer from State Court**

The Juvenile Court shall have jurisdiction over any matter transferred to it by State Court pursuant to the Indian Child Welfare Act, 25 U.S.C. §§ 1901, *et seq.* It shall not be necessary for a new petition or complaint to be filed with the Tribal Court if the pleadings filed in the State Court action are sufficient to give notice of the matters therein involved.

**§ 6.5.08 Indian Child Welfare Act**

It is intended that the provisions of this Title be consistent with and carry out the purposes of the Indian Child Welfare Act, 25 U.S.C. §§ 1901, *et seq.* All applicable provisions of that Act shall be deemed to be incorporated by reference in this Title and in, the event of conflict between provisions of that Act and this Title, the provisions of the Act shall apply.

**CHAPTER 6  
Juvenile Offender Procedure**

**§ 6.6.01 Complaint**

A juvenile offender proceeding may be initiated by complaint. The complaint may be filed in accordance with Chapter 2.2 of this Code by a person who has knowledge of the facts alleged. The complaint shall be signed by the complainant and shall contain:

- (a) A citation to the Tribal Code provision which the minor is alleged to have violated; and
- (b) Name, age and address of the minor who is the subject of the complaint, if known; and
- (c) A plain and concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged facts occurred.

**§ 6.6.02 Warrant**

The Juvenile Court may issue a warrant in accordance with Chapter 2.2 of this Code directing that a minor be taken into custody if the Juvenile Court finds there is probable cause to believe the minor committed the delinquent act alleged in the complaint.

**§ 6.6.03 Custody**

A minor may be taken into custody by a Tribal Officer if:

- (a) The officer has reasonable grounds to believe a delinquent act has been committed and that the minor has committed the act; or

- (b) A warrant has been issued for the minor.

**§ 6.6.04 Tribal Officer's Duties**

A Tribal Officer who takes a minor into custody pursuant to this Code shall proceed as follows:

- (a) The arresting officer shall inform the minor of his rights prior to any questioning in custody;
- (b) The arresting officer shall release the minor to the minor's parent, guardian, custodian and issue verbal counselor warning as may be appropriate, unless shelter care or detention is necessary;
- (c) If the minor is not released, the arresting officer shall make immediate and recurring efforts to notify the minor's parent, guardian, or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until the need for shelter care or detention is determined.
- (d) If the minor is not released, the minor shall be taken immediately to the Juvenile Court Judge or probation officer by the arresting officer.

**§ 6.6.05 Determination of Need for Detention or Shelter Care**

The Juvenile Court or the probation officer shall not place a minor in detention unless a complaint is filed in accordance with this Code, or the Court orders that a minor be taken into custody pursuant to this Code. If the minor's parent, guardian or custodian has not been contacted, the Juvenile Court or the probation officer shall make immediate and recurring efforts to inform them that the minor has been taken into custody and the minor shall be released to the parent, guardian or custodian unless detention or shelter care is immediately necessary. If the minor is not released to his parent, guardian or custodian, the Juvenile Court or the probation officer shall place the minor in detention or shelter care pending the custody hearing.

**§ 6.6.06 Pre-Adjudication Custody**

If a minor is not released to his parent, guardian or custodian, the probation officer shall immediately explore alternative pre-adjudication custody arrangements and prepare recommendations for temporary care and custody for presentation at the custody hearing.

**§ 6.6.07 Approved Facilities - Under Sixteen (16) Years or Age**

A minor under sixteen (16) alleged to be a juvenile offender may be detained, pending court hearings, in the following places and in the following order of priority:

- (a) The home of an extended family member or a private family home on the Reservation that is approved by the Tribe; or
- (b) A foster care facility on the Reservation that is approved by the Tribe; or
- (c) A juvenile shelter care facility on the Reservation that is approved by the Tribe if one of the criteria established by Section 6.4.02 of this Title is met; or
- (d) A juvenile detention facility on the Reservation that is approved by the Tribe if one of the criteria established by Section 6.4.01 of this Title is met.

#### **§ 6.6.08 Approved Facilities-- Sixteen (16) Years or Older**

A minor who is sixteen (16) years of age or older may be detained in a jailor facility used for the detention of adults only if:

- (a) A facility under the previous section is not available or would not assure adequate supervision of the minor; and
- (b) Detention is in a cell separate but not removed from sight and sound of adults whenever possible; and
- (c) Adequate supervision is provided 24 hours a day.

#### **§ 6.6.09 Custody Hearing**

If a minor is placed in detention or shelter care pursuant to the above sections, the Juvenile Court shall conduct a custody hearing within 48 hours for the purpose of determining whether continued detention or shelter care is necessary pending further proceedings. If the minor's parent, guardian or custodian has still not been contacted, or is not present at the custody hearing, the Juvenile Court shall determine what efforts have been made to notify and to obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the parent, guardian or custodian, the Juvenile Court shall recess for not more than 24 hours and direct the probation officer to make continued efforts to obtain the presence of a parent, guardian or Custodian. Notice of the custody hearing shall be given to the minor and his parent, guardian or Custodian as soon as the time for the hearing has been established.

**§ 6.6.10 Procedure at Custody Hearing - Rights of the Minor**

- (a) The Juvenile Court shall inform the minor, his parent, guardian or Custodian of their right to retain counsel or a spokesman at their own expense, and the Judge shall continue the proceedings if it appears that additional time is necessary to obtain counsel or a spokesman. The Court Clerk shall provide the minor, his parent, guardian or Custodian with a current list of spokesmen.
- (b) The Juvenile Court shall inform the minor that he need not be a witness against himself or otherwise incriminate himself.
- (c) The minor, his counselor spokesman, and his parent, guardian or Custodian shall have the right to be heard on his and their own behalf.

**§ 6.6.11 Continued Custody**

The minor shall be released to his parent, guardian or custodian pending his appearance at the hearing on a date to be set by the Court unless:

- (a) One of the criteria for detention or shelter care under Section 6.4.01 and 6.4.02 is found to exist; and
- (b) The Court finds that there is probable cause to believe the minor has committed the act alleged.

The Juvenile Court, before ordering continued custody or release, shall take into consideration the recommendations of the probation officer regarding alternative pre-adjudication custody.

The Juvenile Court may release a minor under this Title to an extended family member or other responsible adult tribal member if the parent, guardian or custodian of the minor consents to the release. If the minor is ten (10) years of age or older, the minor and his parent, guardian or custodian must both consent to such release.

When continued secure detention is necessary, the Court may order that the minor be confined in the nearest state-approved juvenile detention facility.



#### **§ 6.6.12 Investigation by Probation Officer**

The probation officer shall make an investigation within three (3) days of the custody hearing or the release of the minor to his parent, guardian or custodian to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of his investigation, the probation office shall:

- (a) Recommend that no further action be taken; or
- (b) Suggest to the minor, his parent, guardian or custodian that they appear for an informal hearing pursuant to this Title; or
- (c) Request the Court to begin transfer to adult Tribal Court proceedings pursuant to this Title; or
- (d) Recommend that the officer file a petition pursuant to this Title in the Juvenile Court to initiate further proceedings. The petition shall be filed within three (3) days if the minor is in detention or shelter care. If the minor has been previously released to his parent, guardian, custodian, relative or responsible adult, the petition shall be filed within ten (10) days.

#### **§ 6.6.13 Informal Hearing**

The probation officer may hold an informal conference with the minor and the minor's parent, guardian or custodian to discuss alternatives to the filing of a petition if:

- (a) The admitted facts bring the case within the jurisdiction of the Juvenile Court; and
- (b) An informal adjustment of the matter would be in the best interest of the minor and the Tribe; and
- (c) The minor and his parent, guardian or custodian consent to an informal adjustment with knowledge that the consent is voluntary.

Notice of the informal hearing shall be given to the minor and his parent, guardian or custodian and their counsel as soon as the time for the hearing has been established. This does not authorize the Juvenile Court's probation officer to compel any person to appear at any conference, produce any papers or visit any place.

**§ 6.6.14      Informal Hearing - Evidence**

No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any other proceeding against the minor under this Code.

**§ 6.6.15      Informal Hearing - Disposition**

At the informal hearing, the probation officer may:

- (a) Refer the minor and the parent, guardian or custodian to a community agency for needed assistance; or
- (b) Order terms of supervision calculated to assist and benefit the minor which regulate the minor's activities and which are within the ability of the minor to perform; or
- (c) Accept an offer of restitution if voluntarily made by the minor; or
- (d) Recommend that a law enforcement officer file a petition pursuant to this Title.

Any informal adjustment period shall not exceed six (6) months.

**§ 6.6.16      Informal Hearing. Post-Disposition**

The probation officer shall set forth in writing the conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying the situation. The probation officer shall review the minor's progress every thirty (30) days. If, at any time after the initial thirty (30) day period, the officer concludes that positive results are not being achieved, the officer shall recommend that a petition be filed pursuant to this Title.

**§ 6.6.17      Petition**

Proceedings under the Juvenile Code shall be instituted by a petition filed by the presenting officer on behalf of the Tribe and in the interest of the minor. The petition shall state:

- (a) The name, birthdate and residence of the minor;
- (b) The names and residences of the minor's parent, guardian or custodian;

- (c) A citation to the Tribal Code provision which the minor is alleged to have violated; and
- (d) If the minor is in detention or shelter care, the place of detention or shelter care and the time the minor was taken into custody.

**§ 6.6.18      Setting of Adjudicatory Hearing**

Upon receipt of the petition, the Juvenile Court shall set a date for the hearing which shall be within a reasonable time after the presenting officer files the petition for an adjudicatory hearing, unless the hearing is continued for good cause.

**§ 6.6.19      Rights of Parties**

The parties shall have all rights secured to them by federal or tribal law including, but not limited to:

- (a) Right to counsel or a spokesman at their own expense;
- (b) Right not to incriminate themselves. The minor and the minor's parent, guardian or custodian shall be entitled to introduce evidence, to be heard on their own behalf, and to summon and examine witnesses.

**§ 6.6.20      Summons**

At least five (5) days prior to the hearing, the Juvenile Court shall issue summons to:

- (a) The minor; and
- (b) The minor's parent, guardian or custodian; and
- (c) Any person the Juvenile Court believes necessary for the proper adjudication of the hearing; and
- (d) Any person the minor believes necessary for the proper adjudication of the hearing.

The summons shall contain the name of the Court, the title of the proceedings, and the date, time and place of the hearing. A copy of the petition shall be attached to the summons. The summons shall be delivered personally by a tribal law enforcement officer or appointee of the Juvenile Court. If the summons cannot be delivered personally, the Court may deliver the summons by registered mail. If a person who has been issued a summons fails to appear at the hearing, that person shall be held in contempt of court.

#### **§ 6.6.21        Adjudicatory Hearing**

The Juvenile Court shall conduct the adjudicatory hearing for the sole purpose of determining the guilt or innocence of the minor. The hearing shall be private and closed.

#### **§ 6.6.22        Admission to Allegations**

If the minor admits the allegations of the petition, the Juvenile Court shall proceed to the disposition stage only if the Court finds:

- (a)    The minor fully understands his rights under federal and tribal law and fully understands the potential consequences of his admission; and
- (b)    The minor voluntarily, intelligently and knowingly admits to all facts necessary to constitute a basis for Juvenile Court action; and
- (c)    The minor has not, in his purported admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.

#### **§ 6.6.23        Adjudicatory Hearing - Proof**

The Juvenile Court shall hear testimony concerning the circumstances which gave rise to the complaint. If the allegations of the petition are sustained by proof beyond a reasonable doubt, the Juvenile Court shall find the minor to be a juvenile offender and proceed to the dispositional hearing. A finding that a minor is a juvenile offender constitutes a final order for purposes of appeal.

#### **§ 6.6.24        Predispositional Report**

The probation officer shall prepare a written report describing all reasonable and appropriate alternative dispositions. The report shall contain a specific plan for the care of and assistance to the minor calculated to resolve the problems presented in the petition. The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the minor under the proposed plan. Preference shall be given to the dispositional alternatives listed in this Title, and the report shall select that which is the least restrictive of the minor's freedom and is consistent with the interests of the Tribe. The report shall contain specific reasons for not recommending placement of the minor with his parent, guardian or custodian. The probation officer shall present the predispositional report to the Juvenile Court, the person selected by the minor to represent him and the presenting officer, at least one (1) day prior to the dispositional hearing.

**§ 6.6.25      Dispositional Hearing**

A dispositional hearing shall take place not more than twenty (20) days after the adjudicatory hearing. At the dispositional hearing, the Juvenile Court shall hear evidence on the question of proper disposition.

**§ 6.6.26      Notice**

Notice of the dispositional hearing shall be given to the minor and his parent, guardian or custodian and their counsel at least forty-eight (48) hours before the hearing.

**§ 6.6.27      Rights of Parties**

The rights of the parties shall be the same as in an adjudicatory hearing.

**§ 6.6.28      Dispositional Finding**

At the dispositional hearing, the Juvenile Court shall consider the predispositional report submitted by the probation officer and afford the parents an opportunity to controvert the factual contents and conclusions of the reports. The Juvenile Court shall also consider the alternative predispositional report prepared by the minor and his attorney, if any. The dispositional order constitutes a final order for purposes of appeal.

**§ 6.6.29      Dispositional Alternatives**

If a minor has been adjudged a juvenile offender, the Juvenile Court may make the following dispositions:

- (a) Place the minor on probation subject to conditions set by the Juvenile Court; or
- (b) Place the minor in an institution or agency designated by the Juvenile Court.



- (c) The dispositional orders are to be in effect for the time limit set by the Juvenile Court but no order shall continue after the minor reaches the age of eighteen (18) years of age.
- (d) The dispositional orders are to be reviewed at the Juvenile Court's discretion, but at least once every six (6) months.

#### **§ 6.6.30 Modification of Dispositional Order**

A dispositional order of the Juvenile Court may be modified upon a showing of change of circumstances. The Juvenile Court may modify a dispositional order at any time upon the motion of the following:

- (a) The minor; or
- (b) The minor's parent, guardian or custodian; or
- (c) The probation officer.

If the modification involves a change of custody, the Juvenile Court shall conduct a hearing to review its dispositional order.

#### **§ 6.6.31 Notice; Rights**

Notice in writing of a modification hearing shall be given to the minor, the minor's parent, guardian or custodian and their counsel at least forty-eight (48) hours before the hearing. The rights of the parties shall be the same as in a dispositional hearing.

#### **§ 6.6.32 Modification Hearing**

The Juvenile Court shall review the performance of the minor, the minor's parent, guardian or custodian and the probation officer and other persons providing assistance to the minor and the minor's family. In determining modification of disposition, the procedures for a dispositional hearing shall apply. If the request for review of disposition is based upon an alleged violation of a court order, the Juvenile Court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

#### **§ 6.6.33 Revocation of Probation**

A minor who is placed on probation by order of the Juvenile Court pursuant to section 6.6.29(a) above who violates any term or condition of such probation, may be proceeded against in a proceeding to revoke probation as follows:

- (a) A proceeding to revoke probation may be commenced by the filing of a petition entitled "Petition to Revoke Probation." Such petition shall be prepared and filed by the probation officer whenever he has reasonable cause to believe that the minor has violated a term or condition of his probation.
- (b) Probation shall not be revoked except upon a showing by clear and convincing evidence that a term or condition of the minor's probation was violated. In all other respects, a proceeding to revoke probation shall be governed by the procedures, rights and duties applicable to an adjudicatory hearing under this Chapter 6.6.
- (c) If the Juvenile Court finds that a minor has violated a term or condition of his probation pursuant to a hearing to revoke probation under this Section, the Juvenile Court may extend the period of probation or make any other alternative dispositional order available to the court under Section 6.6.29 of this Chapter.
- (d) All applicable procedures prior to, during or after a dispositional hearing under Sections 6.6.24 through 6.6.33 of this Chapter shall be fully applicable to dispositional proceedings for revocation of probation under this Section.

## **CHAPTER 7**

### **Minor-In-Need-Of-Care**

#### **§ 6.7.01 Complaint**

A minor-in-need-of-care proceeding may be initiated by complaint.

The complaint may be filed by a person who has knowledge of the facts alleged. The complaint shall be signed by the complainant. The complaint shall contain:

- (a) Name, age and address of the minor who is the subject of the complaint, if known; and
- (b) A plain and concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged facts occurred.

#### **§ 6.7.02 Warrant**

The Juvenile Court may issue a warrant in accordance with Chapter 2.2 of this Code directing that a minor be taken into custody if the Juvenile Court finds there is probable cause to believe the minor is a minor-in-need of care.

#### **§ 6.7.03 Custody**

A minor may be taken into custody by a law enforcement officer if:

- (a) The officer has reasonable grounds to believe that the minor is a minor-in-need-of-care and that the minor is in immediate danger from his surroundings and that his removal is necessary; or
- (b) A warrant has been issued for the minor.

#### **§ 6.7.04 Tribal Officer's Duties**

A tribal officer who takes a minor into custody pursuant to this Code shall proceed as follows:

- (a) Release the minor to the minor's parent, guardian or custodian and issue verbal counselor warning as many be appropriate, unless shelter care is necessary;
- (b) If the minor is not released, the minor shall be taken immediately to the Juvenile Court Judge or probation officer by the arresting officer.
- (c) If the minor is not released, an officer shall make immediate and recurring efforts to notify the minor's parent, guardian, or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until the need for shelter care is determined.

#### **§ 6.7.05 Determination of Need for Detention**

The Juvenile Court or the probation officer shall not place a minor in shelter care unless a complaint is filed in accordance with this Code, or the Court orders that a minor be taken into custody pursuant to this Code. If the minor's parent, guardian or custodian has not been contacted, the Juvenile Court or the probation officer shall make immediate and recurring efforts to inform them that the minor has been taken into custody and the minor shall be released to the parent, guardian or custodian unless shelter care is immediately necessary. If the minor is not released to his parent, guardian or custodian, the Juvenile Court or the probation officer shall place the minor in shelter care pending the custody hearing.

#### **§ 6.7.06 Pre-Adjudication Custody**

If a minor is not released to his parent, guardian or custodian, the probation officer shall immediately explore alternative pre-adjudication custody arrangements and prepare recommendations for temporary care and custody for presentation at the custody hearing.

#### **§ 6.7.07 Approved Facilities**

A minor alleged to be a minor-in-need-of-care may be detained, pending Court hearings, in the following places and in the following order of priority:

- (a) The home of an extended family member on the Reservation that is approved by the Tribe; or
- (b) A private family home on the Reservation that is approved by the Tribe; or
- (c) A foster care facility on the Reservation that is approved by the Tribe; or
- (d) A juvenile shelter care facility on the Reservation that is approved by the Tribe under the criteria established by § 6.4.02 of this Title.

A minor alleged to be a minor-in-need-of-care may not be detained in a jail or facility used for the detention of adults.

If a minor alleged to be a minor-in-need-of-care is detained in a facility used for the detention of juvenile offenders, he must be detained in a room separate from juvenile offenders or minors alleged to be juvenile offenders.

#### **§ 6.7.08 Custody Hearing**

If a minor is placed in shelter care pursuant to the above sections, the Juvenile Court shall conduct a custody hearing within forty-eight (48) hours for the purpose of determining whether

continued detention or shelter care is necessary pending further proceedings. If the minor's parent, guardian or custodian has still not been contacted, or is not present at the custody hearing, the Juvenile Court shall determine what efforts have been made to notify and to obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the parent, guardian or custodian, the Juvenile Court shall recess for not more than 24 hours and direct the probation officer to make continued efforts to obtain the presence of the parent, guardian or custodian. Notice of the custody hearing shall be given to the minor and his parent, guardian or custodian as soon as the time for the hearing has been established.

**§ 6.7.09 Procedure at Custody Hearing .. Rights of the Minor**

- (a) The Juvenile Court shall inform the minor, his parent, guardian or custodian of their right to retain counsel or a spokesman at their own expense, and the Judge shall continue the proceedings if it appears that additional time is necessary to obtain counsel.
- (b) The Juvenile Court shall inform the minor that he need not be a witness against himself or otherwise incriminate himself.
- (c) The minor, his counsel and his parent, guardian or custodian shall have the opportunity to be heard on his and their own behalf.

**§ 6.7.10 Continued Custody**

The minor shall be released to his parent, guardian or custodian and ordered to appear at the hearing on a date to be set by the Court, unless one of the criteria for shelter care under § 6.4.02 is found by the Court to exist.

The Juvenile Court may release a minor under this Title to a relative or other responsible adult tribal member if the parent, an extended family member, guardian or custodian of the minor consents to the release. If the minor is ten (10) years of age or older, the minor and his parent, guardian or custodian must both consent to the release.

The Juvenile Court, before ordering continued custody or release, shall take into consideration the recommendations of the probation officer regarding alternative pre-adjudication custody arrangements.

**§ 6.7.11 Investigation by Probation Officer**



The probation officer shall make an investigation within three (3) days of the custody hearing or the release of the minor to his parent, guardian or custodian to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of his investigation, the probation officer shall:

- (a) Recommend that no further action be taken; or
- (b) Suggest to the minor, his parent, guardian or custodian that they appear for an informal hearing pursuant to this Title; or
- (c) Recommend that the law enforcement officer file a petition pursuant to this Title in the Juvenile Court to initiate further proceedings. The petition shall be filed within three (3) days if the minor is in shelter care. If the minor has been previously released to his parent, guardian, custodian, relative or responsible adult, the petition shall be filed within ten (10) days.

#### **§ 6.7.12 Informal Hearing**

The probation officer may hold an informal conference with the minor and the minor's parent, guardian or custodian to discuss alternatives to the filing of a petition if:

- (a) The admitted facts bring the case within the jurisdiction of the Juvenile Court; and
- (b) An informal adjustment of the matter would be in the best interest of the minor and the Tribe; and
- (c) The minor and his parent, guardian or custodian consent to an informal adjustment with knowledge that the consent is voluntary.

Notice of the informal hearing shall be given to the minor and his parent, guardian or custodian and their counsel as soon as the time for the hearing has been established. This does not authorize the Juvenile Court's probation officer to compel any person to appear at any conference, produce any papers or visit any place.

#### **§ 6.7.13 Informal Hearing - Evidence**

No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any other proceeding under this Code.

#### **§ 6.7.14 Informal Hearing - Disposition**

At the informal hearing, the probation officer may:

- (a) Refer the minor and his parent, guardian or custodian to a community agency for needed assistance; or
- (b) Order terms of supervision calculated to assist and benefit the minor which regulate the minor's activities and which are within the ability of the minor to perform; or
- (c) Recommend that a law enforcement officer file a petition pursuant to this Title.

Any informal adjustment period shall not exceed six (6) months.

#### **§ 6.7.15 Informal Hearing - Post-Disposition**

The probation officer shall set forth in writing the conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying the situation. The probation officer shall review the minor's progress every thirty (30) days. If, at any time after the initial thirty (30) day period, the officer concludes that positive results are not being achieved, the officer shall recommend that a petition be filed pursuant to this Title.

#### **§ 6.7.16 Petition**

Proceedings under this Chapter 6.7 shall be instituted by a petition filed by the presenting officer on behalf of the Tribe and in the interests of the minor. The petition shall state:

- (a) The name, birthdate and residence of the minor;
- (b) The names and residences of the minor's parent, guardian or custodian;
- (c) Allegations as to the facts that would make the minor a minor-in-need-of-care;
- (d) If the minor is in shelter care, the place of shelter care and the time he was taken into custody.

#### **§ 6.7.17 Setting of Adjudicatory Hearing**

Upon receipt of the petition, the Juvenile Court shall set a date for the hearing which shall be within a reasonable time after the presenting officer files the petition for an adjudicatory hearing, unless the hearing is continued for good cause.

#### **§ 6.7.18 Rights or Parties**

The parties shall have all rights secured to them by federal or tribal law including, but not limited to:

- (a) Right to counselor spokesman at their own expense;
- (b) Right not to incriminate themselves.

The minor and the minor's parent, guardian or custodian shall be entitled to introduce evidence, to be heard on their own behalf, and to summon and examine witnesses.

#### **§ 6.7.19 Summons**

At least five (5) days prior to adjudicatory hearing, the Juvenile Court shall issue summons to:

- (a) The minor; and
- (b) The minor's parent, guardian or custodian; and
- (c) Any person the Juvenile Court believes necessary for the proper adjudication of the hearing; and
- (d) Any person the minor believes necessary for the proper adjudication of the hearing.

The summons shall contain the name of the Court, the title of the proceedings, and the date, time and place of the hearing. A copy of the petition shall be attached to the summons. The summons shall be delivered personally by a tribal law enforcement officer or appointee of the Juvenile Court. If the summons cannot be delivered personally, the Court may deliver the summons by registered mail. If a person who has been issued a summons fails to appear at the hearing, that person shall be held in contempt of court.

#### **§ 6.7.20 Adjudicatory Hearing**

The Juvenile Court shall conduct an adjudicatory hearing for the sole purpose of determining whether the minor is a minor-in-need-of-care. The hearing shall be private and closed.

#### **§ 6.7.21 Adjudicatory Hearing - Proof**

The Juvenile Court shall hear testimony concerning the circumstances which gave rise to the complaint. If the allegations of the petition are sustained by proof beyond a reasonable doubt, the Juvenile Court shall find the minor to be a minor-in-need-of-care and proceed to a dispositional hearing. A finding that a minor is a minor-in-need-of-care constitutes a final order for purposes of appeal.

#### **§ 6.7.22 Predispositional Report**

The probation officer shall prepare a written report describing all reasonable and appropriate alternative dispositions. The report shall contain a specific plan for the care of and assistance to the minor calculated to resolve the problems presented in the petition. The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the minor under the proposed plan. Preference shall be given to the dispositional alternatives listed in this Title, and the report shall select that which is the least restrictive of the minor's freedom and is consistent with the interests of the Tribe. The report shall contain specific reasons for not recommending placement of the minor with this parent, guardian or custodian. The probation officer shall present the pre dispositional report to the Juvenile Court, the person selected by the minor to represent him and the presenting officer, at least one (1) day prior to the dispositional hearing.

#### **§ 6.7.23 Dispositional Hearing**

A dispositional hearing shall take place not more than twenty (20) days after the adjudicatory hearing. At the dispositional hearing, the Juvenile Court shall hear evidence on the question of proper disposition.

#### **§ 6.7.24 Notice**

Notice of the dispositional hearing shall be given to the minor and his parent, guardian or custodian and their counsel at least forty-eight (48) hours before the hearing.

#### **§ 6.7.25 Rights of Parties**

The rights of the parties shall be the same as in an adjudicatory hearing.

#### **§ 6.7.26 Dispositional Hearing**

At the dispositional hearing, the Juvenile Court shall consider the predisposition report submitted by the probation officer and afford the parents an opportunity to controvert the factual

contents and conclusions of the reports. The Juvenile Court shall also consider the alternative predisposition report prepared by the minor and his attorney, if any. The dispositional order constitutes a final order for purposes of appeal.

#### **§ 6.7.27      Dispositional Alternatives**

If a minor has been adjudged a minor-in-need-of-care, the Juvenile Court may make any of the following dispositions which are listed by priority:

- (a) Permit the minor to remain with this parents, guardian or custodian subject to such limitations and condition as the Court may prescribe; or
- (b) Place the minor with an extended family member within the external boundaries of the Reservation subject to such limitations and conditions as the Court may prescribe; or
- (c) Place the minor in a foster home within the external boundaries of the Reservation which has been approved by the Tribe subject to such limitations and conditions as the Court may prescribe; or
- (d) Place the minor in a shelter care facility designated by the Court that is within the exterior boundaries of the Reservation; or
- (e) Place the minor in the home of an extended family member or a foster home outside the external boundaries of the Reservation subject to such limitations and conditions as the Court may prescribe; or
- (f) Recommend that termination proceedings begin.
- (g) The dispositional orders are to be in effect for the time limit set by the Court but no order shall continue after the minor reaches the age of eighteen (18) years; and
- (h) The dispositional orders are to be reviewed at the Juvenile Court's discretion at least once every six (6) months.

#### **§ 6.7.28      Placement Outside Boundaries of the Reservation**

Whenever a minor is placed in a home or facility located outside the boundaries of the Reservation, the Court shall require the party receiving custody of the minor to sign an agreement that the minor shall be returned to the Court upon order of the Court.

The Juvenile Court shall retain jurisdiction over any minor placed by the Court in a home or facility located outside the boundaries of the Reservation.



### **§ 6.7.29      Modification of Dispositional Order**

A dispositional order of the Juvenile Court may be modified upon a showing of change of circumstances. The Juvenile Court may modify a dispositional order at any time upon the motion of the following:

- (a)     The minor; or
- (b)     The minor's parent, guardian or custodian; or
- (c)     The probation officer.

If the modification involves a change of custody, the Juvenile Court shall conduct a hearing to review its dispositional order.

### **§ 6.7.30      Notice; Rights**

Notice in writing of the hearing shall be given to the minor, the minor's parent, guardian or custodian and their counsel at least forty-eight (48) hours before the hearing. The rights of the parties shall be the same as in a dispositional hearing.

### **§ 6.7.31      Modification Hearing**

The Juvenile Court shall review the performance of the minor, the minor's parent, guardian or custodian and the probation officer and other persons providing assistance to the minor and the minor's family. In determining modification of the disposition, the procedures for a dispositional hearing shall apply. If the request for review of disposition is based upon an alleged violation of a court order, the Juvenile Court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

## **CHAPTER 8**

### **Guardianship Procedures**

#### **§ 6.8.01      Guardianship for Minors-in-Need-of-Care, Petition**

Any party to a minor-in-need-of-care proceeding, including any Tribal Probation officer, may file a petition in the Juvenile Court requesting that guardianship be created as to a minor-in-need-of-care.

#### **§ 6.8.02      Notice- Setting of Hearing**

Upon receipt of the guardianship petition, the Juvenile Court shall set a date for hearing which shall be no more than twenty (20) days from date of receipt of the petition unless continued for good cause by the Juvenile Court.

All interested parties shall be entitled to notice of the guardianship proceeding and hearing at least five (5) days prior to the date of the hearing. Interested parties shall include all parties to the minor-in-need-of-care proceeding whether or not such party made an appearance at the proceeding and any other person the petitioning party or the Juvenile Court deems necessary to the proper conduct of the hearing.

#### **§ 6.8.03      Guardianship Hearing Procedures**

At the hearing on a guardianship petition, all parties have the right to present evidence and to cross-examine witnesses. In addition, all rights afforded the parties, including the minor child, in proceedings brought under Chapter 6.7 of this Code shall be fully applicable. A guardianship may be established if the Court finds by a preponderance of the evidence that:

- (a) the child has been found to be a minor-in-need-of-care pursuant to Chapter 6.7 of this Code;
- (b) a dispositional order has been entered pursuant to Chapter 6.7 of this Code;
- (c) the child has been removed or will have been, at the time of the hearing, removed from the custody of the parent(s) for a period of at least six (6) months pursuant to a finding of dependency under Chapter 6.7 of this Code;
- (d) any services offered by the Juvenile Court have been offered or provided and all necessary services, reasonably available and capable of correcting parental deficiencies within the foreseeable future have been offered or provided;
- (e) there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future; and

- (f) a guardianship rather than termination of the parent child relationship or continuation of the child's current minor-in-need-of-care status would be in the best interest of the family and the child.

#### **§ 6.8.04 Guardianship Order**

If the Juvenile Court has made a finding under section 6.8.03, it shall enter an order establishing a guardianship for the child. The order shall:

- (a) appoint a person or agency to serve as guardian;
- (b) specify the guardian's rights and responsibilities concerning the care, custody and control of the child. A guardian shall not have the authority to consent to the child's adoption;
- (c) specify an appropriate frequency of visitation between parent and child; and
- (d) specify the need for any continued involvement of Makah Family Services and the nature of that involvement, if any.

#### **§ 6.8.05 Modification of Order**

Any party may, at any time, seek to change, modify or set aside a guardianship order and the Juvenile Court may, after appropriate notice and hearing, change, modify or set aside such order as the Judge may deem just and proper. Modification procedures shall be conducted pursuant to the requirements of sections 6.7.29, 30 and 31 of this Code.

#### **§ 6.8.06 Foster Care Payments**

Establishment of a guardianship under this Chapter does not preclude a guardian from receiving foster care payments.

#### **§ 6.8.07 Review Hearing Not Required**

A guardianship established under sections 6.8.03 and 6.8.04 is not subject to the review hearing requirements of section 6.7.27(h) of this Code.

#### **§ 6.8.08 Qualification for Guardian**

Any person over the age of 21 years who is not otherwise disqualified by this section may be appointed the guardian of a child under section 6.8.03. No person is qualified to serve as guardian who: (a) is of unsound mind; (b) has been convicted of a felony or of a misdemeanor involving moral turpitude; or (c) is a person whom the Court finds unsuitable.

**§ 6.8.09 Full Faith and Credit**

It is the intention of this Chapter that the court of any state shall give full faith and credit as provided for in the United States Constitution to the public acts, records and judicial proceedings of the Makah Indian Tribe as to any proceeding brought under this Chapter to the same extent that full faith and credit is given to the public acts, records and judicial proceedings of any other state.

**§ 6.8.10 Incorporation of Other Laws**

In any guardianship proceeding under this Chapter 6.8, any provision of the Makah Law and Order Code, in particular Title 6 of such Code, or any other law, ordinance, rule or regulation of the Makah Tribe, as now or hereafter enacted or amended, shall be applied by the Juvenile Court insofar as such law, ordinance, rule or regulation is deemed applicable.

**CHAPTER 9  
Juvenile Curfew**

**§ 6.9.01 Curfew Established**

It shall be unlawful for any minor, without good cause, to be in or on any street, road, highway, alley or other public place on the Makah Indian Reservation between the hours of 9:00 o'clock p.m. and 5:00 o'clock a.m. Sunday through Thursday throughout the school year and 10:00 o'clock p.m. and 5:00 o'clock a.m. on any other night without the permission of the minor's parent, guardian or employer, or unless accompanied by the parent, guardian or any adult twenty-one(21) years of age or older, who has been given permission by the parent, guardian or employer to accompany the minor. For purposes of this section, the term "school year" shall mean the period between the official opening of K-12 school in the autumn and the official closing of K-12 for summer vacation on the Makah Indian Reservation. It shall be unlawful for any minor, without good cause, to be in or on any street, road, highway, alley or other public place on the Makah Indian Reservation between the hours of 11:00 o'clock p.m. and 5:00 o'clock a.m. on any night during the period of non-school year as defined above, without the permission of the minor's parent, guardian or employer, or unless accompanied by the parent, guardian or an adult twenty-one (21) years of age or older, who has been given permission by the parent, guardian or employer to accompany the minor.

#### **§ 6.9.02      Penalty – Minor**

Any minor who shall be in violation of the above § 6.9.01 shall be taken into custody by a tribal officer and returned to the home of the parent or guardian and delivered into the custody of the parent or guardian. If such minor has been found to have been in violation of this Chapter during the previous one (1) year period, then the tribal officer shall take the minor into custody and deliver the minor to the Tribal Court either under the juvenile offender or minor-in-need-of-care chapters of this Code.

#### **§ 6.9.03      Penalty – Parent, Guardian or Employer**

Any parent, guardian or employer of such minor child, who shall knowingly allow or permit such child to be in violation of any of the provisions of this Chapter, shall be deemed to be guilty of a Class C offense and subject to the penalties under Chapter 5.8 of this Code.

#### **§ 6.9.04      Repealer**

Makah Tribal Ordinance No. 1, enacted February 16, 1939, and amended by Tribal Resolution No. 79-70 dated June 22, 1970, is hereby repealed in its entirety.

#### **§ 6.9.05      Loitering of Minors**

It shall be unlawful for any person under the age of 21 years to congregate, loiter, wander, stroll, stand or play upon the following areas:

- Paved Parking area of Washburn's Store, or
- Picnic area adjoining Washburn's Store, or
- Village Market area, or
- Vacant area west of the Village Market area, or
- Makah Marina, or
- Paved parking area of the Makah Marina, or
- Ramps or piers of the Makah Marina

Congregation, loitering, wandering, strolling, standing or playing by a person under the age of 21 is prohibited, whether on foot or in or upon any conveyance being driven, rode, or parked thereon, unless accompanied by a parent, guardian or other adult person having his or her care, custody or control, or unless performing an errand or duty as directed by his parent or guardian,



or of urgent necessity, or unless pursuing the duties of his employment in an expeditious and orderly manner, or unless going directly home from places of business, school or private homes.

#### **§ 6.9.06      Responsibility of Parents**

It shall be unlawful for any parent, guardian or other adult person having the care and custody of a person under the age of 18 years to permit or by inefficient control to allow such person to congregate, loiter, wander, stroll, stand or play upon the following areas:

- Paved parking area of Washburn's Store, or
- Picnic area adjoining Washburn's Store, or
- Village Market area, or
- Vacant area west of the Village Market area, or
- Makah Marina, or
- Paved parking area of the Makah Marina, or
- Ramps or piers of the Makah Marina

Congregation, loitering, wandering, strolling, standing or playing by a person under the age of 21 prohibited unless the said person under the age of 18 years is lawfully going about his or her business or has previously obtained a permit from the Makah Tribe's Operations Department according to the conditions of section (1) above; provided that any parent, guardian or other person who shall have made a missing person notification or runaway notification to the Police Department shall not be considered to have permitted any person to be in violation of this code provision.

#### **§ 6.9.07      Civil Penalty**

Any person violating either section 6.9.05 or 6.9.06 above shall be subject to a civil penalty not to exceed \$200.00 for each such violation. Failure to pay any civil penalty resulting from violation may subject the person responsible to criminal sanction under Makah Law and Order Code section 5.4.15.

## **CHAPTER 10**

### **Termination of Parental Rights**

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#### **§ 6.10.01 Purpose**

Parental rights to a child may be terminated by the Juvenile Court according to the procedures in this Chapter.

#### **§ 6.10.02 Petition**

Proceedings to terminate parental rights shall be instituted by a petition filed by a tribal officer on behalf of the Tribe or by parents or guardian of the child. The petition shall state:

- (a) The name, birthdate, and residence of the minor;
- (b) The names and residences of the minor's parent, guardian or custodian;
- (c) If the child is in detention or shelter care, the place of detention or shelter care and the time he was taken into custody.

#### **§ 6.10.03 Setting of Hearing**

Upon receipt of the petition, the Juvenile Court shall set a date for the termination hearing which shall be not more than twenty (20) days after the Juvenile Court receives the petition from the officer. The hearing may be continued upon motion of the minor's parent, guardian or custodian, or upon motion of the officer by reason of the unavailability of material evidence or witnesses and if the Juvenile Court finds the officer has exercised due diligence to obtain the material evidence and reasonable grounds exist to believe that the material evidence will become available.

#### **§ 6.10.04 Pre-Termination Report**

Upon the filing of the petition, the probation officer shall begin the preparation of a pre-termination report. The probation officer shall consult with the minor's parent and all social services, health, education and other personnel who have had prior professional contact with the minor and his/her parent, guardian or custodian to determine whether termination of parental rights is consistent with the best interests of the child. The probation officer may also review any of the minor's previous Juvenile Court records. The probation officer shall prepare a written report containing professional opinions of all personnel with whom he has consulted. The report shall be presented to the Juvenile Court at least two (2) days before the termination hearing.

#### **§ 6.10.05 Summons**

At least five (5) days prior to the termination hearing, the Juvenile Court shall issue summons to:

- (a) The minor; and
- (b) The minor's parent, guardian or custodian; and
- (c) Any person the Juvenile Court believes necessary for the proper adjudication of the hearing; and
- (d) Any person the minor believes necessary for the proper adjudication of the hearing.

The summons shall contain the name of the Court, the title of the proceedings, and the date, time and place of the hearing. A copy of the petition shall be attached to the summons. The summons shall be delivered personally by a tribal law enforcement officer or appointee of the Juvenile Court. If the summons cannot be delivered personally, the Court may deliver the summons by registered mail. If a person who has been issued a summons fails to appear at the hearing, that person shall be held in contempt of court. Upon a showing to the court that diligent efforts were made to serve the summons/petition on the minor's parents, and that for sufficient reasons service could not be made, the judge may allow service to be made by publication under the provisions of § 3.3.02 of this Code. In such case, the date of the hearing shall not be less than thirty (30) days from the date of the first publication.

#### **§ 6.10.06 Termination Hearing**

The Juvenile Court shall conduct the termination hearing for the sole purpose of determining whether parental rights shall be terminated.

#### **§ 6.10.07 Rights of Parties**

The parties shall have all rights secured to them by federal or tribal law including, but not limited to:

- (a) Right to counselor spokesman at their own expense;
- (b) Right not to incriminate themselves or be witnesses against themselves.

The parties shall be entitled to introduce evidence, to be heard on their own behalf, and to summon and examine witnesses.

#### **§ 6.10.08 Termination Hearing - Proof**

The Juvenile Court shall hear testimony concerning the circumstances that gave rise to the petition and the need for termination of parental rights. The Juvenile Court may terminate the parental rights of the parent(s) to his child if it finds beyond a reasonable doubt that:

- (a) The child has been removed from the custody of the parent for a period of at least six (6) months pursuant to a finding that the child is a minor-in-need-of-care; and
- (b) The conditions which led to the removal still persist; and
- (c) There is little likelihood that those conditions will be remedied so that the child can be returned to the parent in the near future; and
- (d) Continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

If a finding that the child is a minor-in-need-of-care has been made pursuant to § 6.2.12(b), (c), or (d), the Juvenile Court shall determine, beyond a reasonable doubt, if necessary services have been provided or offered to the parent to facilitate a reunion and the parent has substantially failed to accept such services.

If the parent is subject to an order of disposition pursuant to a finding that the child is a minor-in-need-of-care, the Juvenile Court shall determine, beyond a reasonable doubt, if the parent has substantially failed to comply with such order.

#### **§ 6.10.09 Voluntary Termination - Written Consent**

The Juvenile Court may terminate the parental rights of the parents if the voluntary, written consent of both parents has been acknowledged before the Court, and if the Court finds, after full hearing, that such termination is in the best interest of the minor. The Juvenile Court Judge shall certify that the terms and consequences of the consent were fully explained in detail, and were fully understood by the parents. Any consent given prior to or within ten (10) days after birth of the child shall not be valid.

#### **§ 6.10.10 Dispositional Alternatives**

If parental rights to a child are terminated, the Juvenile Court shall place the minor in a foster care or shelter care facility which has been approved by the Tribe, and take whatever action is necessary to begin adoption proceedings in the appropriate form.

**§ 6.10.11 Other Dispositions**

If parental rights to a child are not terminated, the Juvenile Court may make a disposition in accordance with the provisions in this Title regarding a minor adjudged to be a minor-in-need-of-care.

**§ 6.10.12 Enrollment Status Unaffected**

No adjudication of a termination of parental rights shall affect the minor's enrollment status as a member of any tribe or the minor's degree of blood quantum of any tribe.

## **CHAPTER 11 General Provisions**

**§ 6.11.01 Court Records**

A record of all hearings under this Title shall be made and preserved. All Juvenile Court records shall be confidential and shall not be open to inspection to any but the following:

- (a) The minor; or
- (b) The minor's parent, guardian, custodian or counsel; or
- (c) The probation officer; or
- (d) The presenting officer.

**§ 6.11.02 Law Enforcement Records**

Law enforcement records and files concerning a minor shall be kept separate from the records and files of adults. All law enforcement records and files shall be confidential and shall not be open to inspection to any but the following:

- (a) The minor; or



- (b) The minor's parent, guardian, custodian or counsel; or
- (c) The probation officer; or
- (d) The presenting officer.

#### **§ 6.11.03 Expungement**

When a minor who has been the subject of any proceeding before the Juvenile Court attains his eighteenth (18th) birthday, the Chief Judge of the Tribal Court shall order the Clerk of the Court to destroy both the court records and the law enforcement records.

#### **§ 6.11.04 Appeal**

For purposes of appeal, a record of the proceedings shall be made available to the minor, his parent, guardian, custodian or counsel. Costs of obtaining this record shall be paid by the party seeking the appeal. Any party to a Juvenile Court hearing may appeal a final order or disposition of the case by filing a written notice of appeal with the Juvenile Court within ten (10) days of the final order or disposition. No decree or disposition of a hearing shall be stayed by such appeal. All appeals shall be conducted in accordance with the general appeal provisions of this Code.

#### **§ 6.11.05 Contempt of Court**

Any willful disobedience or interference with any order of the Juvenile Court constitutes contempt of court. The Juvenile Court may punish an adult for contempt of court in accordance with this Code.

#### **§ 6.11.06 Report of Child Abuse**

Any medical personnel, school personnel, mental health personnel, social worker, or crisis intervention counselor who has reasonable cause to believe that a minor has been abused, neglected or lacks proper supervision under the standards established in § 6.2.12 of this Title shall report such incident to the Makah Department of Health, Education and Welfare or to the Makah Tribal Police.

#### **§ 6.11.07 Support of Minors**

When temporary custody of a minor is vested by the Court in an individual or agency other than his parents or juvenile detention facility, the Court may in the same or any subsequent proceeding inquire into the ability of the parents or any other person who may be obligated, to support the minor and to pay any other expenses of the minor, including the expense of any medical, psychiatric, or psychological examination or treatment provided under order of the

Court. The Court may, after due notice and a hearing on the matter, require the parents or other person to pay the whole or part of such support and expenses, depending on their financial resources and other demands on their funds.

**§ 6.11.08 Prior Inconsistent Codes and Ordinances Repealed**

Any and all ordinances of the Makah Tribal Council which conflict in any way with the provisions of this Title 6 are hereby repealed to the extent that they are inconsistent, or in conflict with, or are contrary to the spirit and/or purpose of this Title.

**§ 6.11.09 Separability**

If any provision of this Title, or its application to any person or circumstance is held invalid, the remainder of this Title, or the application of the provision to other persons or circumstances is not affected.