

TITLE 16

FAMILY PROTECTION CODE

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TITLE 16

FAMILY PROTECTION CODE

Chapter 16.01 General Provisions

16.01.01 Definitions

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

- a) **Abandonment:** A parent has not contacted the child by telephone, letter, or in person and has made no provisions for his care, for more than one continuous year.
- b) **Adult:** Any person who is either eighteen (18) years of age or older, married, or emancipated.
- c) **Custodian:** A person or entity having legal authority over a child either by court order or parent's permission. This term generally applies to foster parents, child placing agencies, and persons temporarily caring for a child at the request of a parent.
- d) **Extended Family:** This term does not have a precise definition. Under Port Gamble S'Klallam custom, there are formal and informal ties which bind the community. Extended family ties are based on blood lines, marriage, friendship, and caring. All women in the community become "auntie" or "grandma" when they become a certain age, regardless of blood relationship. Although grandparents (including great and great-great), aunts, uncles, siblings, cousins, "in-laws" and "step" relations are all extended family, any member of the Port Gamble S'Klallam community who is reliable, responsible, loving, and willing to care for a child may be considered extended family.
- e) **Licensed home or licensed care:** Person(s) licensed to regularly provide care on a twenty-four hour basis to one or more children in the person's home. The terms may be used interchangeably.
- f) **Indian Tribe:** Any tribe, band, nation, or group of Indians recognized by the Secretary of Interior as eligible for services provided to Indians; any treaty tribe, metis community, or nonstatus Indian community from Canada; and any tribe recognized as such by the Port Gamble S'Klallam Tribe, regardless of federal recognition status.
- g) **Parent:** This term includes a biological or adoptive parent but does not include persons whose parental rights have been terminated. It also does not include an unwed father who has not acknowledged or established paternity in one of the following ways: being identified

as the father on the child's birth certificate, by acknowledging paternity to tribal enrollment authorities or to a court, or through formal paternity proceedings under state or tribal law.

- h) Tribal Status: The tribe or tribes, if any, in which a child is a member or eligible for membership. (Membership and enrollment are used interchangeably in this title.)

[HIST: Resolution No. 90 A 35, passed 5/8/90. Resolution No. 09-A-057, passed 5/12/09, amended this section to add definition of licensed home or licensed care.]

16.01.02 Guardian Ad Litem- When to Use

A guardian ad litem is a person appointed by the Court to represent the best interests of a child. The Court shall appoint a guardian ad litem when a parent cannot exercise sound judgment on behalf of the child, unless no one is available to serve as a guardian ad litem.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.01.03 Other Laws Apply

This title is part of the Port Gamble S'Klallam Law and Order Code. The Court's jurisdiction, procedures for closed hearings and records, and other relevant sections of the Law and Order Code apply to proceedings under this title.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.01.04 No Right to a Jury

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.01.05 Sovereign Immunity

The sovereign immunity of the Port Gamble S'Klallam Tribe shall in no manner be waived by this title. The Business Committee members and employees, appointees, and volunteers of Port Gamble S'Klallam Tribe (including but not limited to the Community Health Representative, alcohol program, foster home program and foster parents, tribal law enforcement, mental health, tribal court personnel, head start, and other persons and departments serving children and families) are cloaked with the sovereign immunity of the Port Gamble S'Klallam Tribe. No person referred to above shall be liable for the inability or failure to provide services to any person.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.01.06 Notice of Hearing

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

- a) Personal service (see section 3.02.04),
- b) Certified mail with return receipt requested and by regular mail, or
- c) Any other method approved by the Court.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.01.07 Recognition of Other Courts' Orders

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.01.08 Notice to Other Tribes

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.01.09 Transfer of Jurisdiction - Authority of Court

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.01.10 Transfer of Jurisdiction - Hearings

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

- a) The wishes of the parent, custodian, or guardian;
- b) The wishes of the child, if he or she is able to understand the meaning of a transfer of jurisdiction;
- c) The recommendation of tribal law enforcement and of social and health services staff;
- d) The place each party lives and their tribal status;
- e) The ties and contacts each party has with the communities involved; and
- f) Whether the other government (tribe) has responded to the notice.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.01.11 Interim Orders to Protect the Child During Transfer Proceedings

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

Chapter 16.02 Child in Need of Care

16.02.01 Purpose

This chapter provides a process for the Port Gamble S'Klallam Tribe to protect and assist children and families. The Tribe has always served this function without a formal code. The purpose of this written procedure is to help people and agencies outside of the Tribe to understand how to work with the Tribe to protect and assist children and families, and to better coordinate the services the Tribe offers children and families.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.02.02 Child in Need of Care

In determining whether a child is in need of care, the following terms and situations shall be interpreted consistently with the Port Gamble S'Klallam Foster Care Standards which are incorporated by reference as part of this code, and by the Robert Bensel indicators and guidelines which are also incorporated by reference as part of this code. When there is a question of whether a child is in need of care, the presumption shall be in favor of providing protection for the child.

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

- a) Has been neglected. This term includes:
 - A child who is not receiving the food, clothing, shelter, medical care, dental care, education, or supervision needed for his or her well-being or development,
 - An infant who is failing to thrive,
 - A child who is not dressed adequately for weather conditions,
 - A child who is truant as defined by the Law and Order Code,
 - A child left with a baby sitter who is intoxicated, irresponsible, or too young,
 - A child who lacks parental control because of the habits or fault of the parent(s), guardian, or custodian,
 - A child who is doing the work of a parent in running a household because the parent refuses or fails to act as a parent or forces the child,

- A child exposed to a dangerous situation as a result of parental negligence,
- A child whose parent(s) misuse benefits intended for the child, such as selling or squandering food stamps or commodities,
- An unborn child whose mother is using alcohol or illegal drugs,
- A nursing child whose mother is using alcohol or other drugs to an extent that the baby may be endangered,
- An unborn child whose mother is not receiving adequate prenatal care,
- A child who is allowed access to alcohol or other drugs,
- A child who is allowed to be out after curfew, if the Tribe has established a curfew,
- A child who is a runaway,
- A child with untreated head lice,
- A child who is attempting to live independently but does not have the financial means to care for him or herself.

b) Has been physically abused. This term includes:

- Any bruising, welting, abrasion, lesions, burns, broken bones, or other damage to the body, not clearly caused by pure accident,
- A child who has been given inappropriate food, drink or drugs or a child who is suffering from malnutrition,
- Inappropriate punishment (see S'Klallam Foster Care Standards).

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

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

- Serious inability of the child to respond appropriately to the normal behavior of adults (e.g. the child cowers or ingratiates himself to adults);
- Rejection: refusal to accept the child;
- Ignoring: the parent deprives the child of essential responsiveness which stifles emotional growth and development of the child;
- Ridicule / Terrorizing: Verbal assaults creating a climate of fear, bullying the child, name-calling, destroying the child's possessions, or attacking beloved people or pets;
- Isolating: Cutting a child off from normal social experiences, preventing a child from forming friendships, or a child who is locked in or locked out of the home or who leaves home because of partying in the home;
- Corrupting: teaching a child socially deviant behavior such as rewarding aggression, delinquency, or sexually precocious behavior;
- Penalizing a child for positive, normal behavior ;
- Discouraging the attachment between care-giver and infant; failure to thrive and physical abuse may follow; or
- Exposure to domestic violence in the family: the child observes or overhears violence between members of the family and/or the child lives in an atmosphere of severe abusive conflict, creating acute or chronic fear in the child.

d) Has been sexually abused. This term includes:

- Contacts or interactions between a child and an adult when the child is being used for the sexual stimulation of the perpetrator or another person;
- Sexual abuse may also be committed by a person under the age of 18 when that person is either significantly older than the victim or when the perpetrator is in a position of power or control over another child;
- The exposure of the perpetrator's genitals in the presence of a child, or any other sexual act, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose;

- Obscene calls, jokes, peeping, or sexual propositions;
- Child pornography or sexual positioning for photos;
- Forcing a child to watch sexual act or sexual violence;
- Unwanted hugs, kisses, pinching, tickling;
- French kissing, handling genitals, masturbation, mouth to genital contact;
- Oral, anal, or vaginal rape;
- Sexual maiming or sexual bondage.

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

[HIST: Resolution No. 90 A 35, passed 5/8/90. Amended by Resolution 01-A-084, passed 8/14/01, which strengthens the protections for unborn children when a mother uses alcohol or illegal drugs and clarifies that failure to obtain adequate dental care for a child constitutes neglect. Resolution No. 02 A 098, passed 9/10/02 amended this section to add to examples of neglect, "A child who is attempting to live independently but does not have the financial means to care for him or herself." Resolution No. 03 A 130, passed 9/9/03 added the provision under subsection (c) on exposure to domestic violence. Exposure to domestic violence negatively impacts a child's emotional, social and psychological development. It may become a learned pattern leading to adult criminal behavior and it may be transmitted to future generations. Acute or chronic experience of violence can cause chemical changes in the brain, altering a child's brain development]

REPORTING ABUSE AND NEGLECT

16.02.03 Reporting Abuse and Neglect:

The care of children is both a family and a tribal responsibility. Any member of the Port Gamble S'Klallam Tribe and persons residing within the jurisdiction of the Tribe who have reason to believe that a child has been abused or neglected may file a report that a child is in need of care. Reporting under this section is mandatory for tribal employees and contractors with the tribe who perform services to the community in the areas of education, health and human services, law enforcement and members of the clergy.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.02.04 Immunity

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.02.05 Sanctions

Any person who is required to report abuse or neglect under section 16.02.03 and who knowingly fails to report abuse or neglect is subject to a civil fine not to exceed \$5,000.00.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.02.06 Contents of the Report

A report shall include:

- a) The name, birthdate, address, and tribal status of the child, if known, and
- b) A plain statement of the facts on which the report is based, including the date, time, and location of the events.

The name of the reporter shall not be disclosed to anyone.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.02.07 Open Communication Policy

The policy of the Port Gamble S'Klallam Tribe toward investigation of child abuse and neglect is one of open communication between agencies and departments for the protection of children while respecting the confidentiality of statements by victims, their families, and reporters of abuse/neglect. Where there is a conflict between confidentiality and the need for communication, protection of the child shall be the overriding consideration.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.02.08 Response to the Report

A report that a child is in need of care may come from a community member, a school representative, state Child Protective Services, or any of the mandatory reporters listed in section 16.02.03. If the report is initially received by the Indian Child Welfare Worker's office, Tribal Law Enforcement shall be immediately notified of the report. If the report is first received by Tribal Law Enforcement and the case will require an out of home placement of the child, the Indian Child Welfare Worker's office

shall be notified. The two departments shall cooperate with one another, along with any other agencies or departments which are involved, to protect the child and family, and to resolve the matter.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.02.09 Role of Law Enforcement

Tribal Law Enforcement shall be responsible for:

- a) Conducting criminal and civil investigations which may be associated with a report that a child is in need of care;
- b) Coordinating with other departments or agencies (e.g. notice to C.P.S. in cases of intra-family abuse and neglect);
- c) Providing protection and assistance in the removal and placement of children, on request, to the Indian Child Welfare Worker and authorized child protection and placement agency personnel;
- d) Taking custody of a child if the officer believes the child is in immediate and serious danger and removal is necessary for the child's safety or well-being. The officer shall immediately contact the Indian Child Welfare Worker to discuss emergency placement options. If the Indian Child Welfare Worker is not available, the officer shall place the child in a safe, emergency placement consistent with the short term placement preferences in section 16.02.17;
- e) Filing petitions for child in need of care, on behalf of the Port Gamble S'Klallam Tribe; and
- f) Work with the Indian Child Welfare Worker to notify the parent, guardian, or custodian if he or she is unaware that the child has been placed out of the home, but the location of the placement shall not be released if necessary for the child's protection.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.02.10 Role of the Indian Child Welfare Worker

The Indian Child Welfare Worker shall:

- a) Take custody of a child if the Indian Child Welfare Worker reasonably believes the child is in immediate and serious danger and removal is necessary for the child's safety or well-being. The Indian Child Welfare Worker shall be accompanied by Law Enforcement unless Law Enforcement is unavailable;

- b) Take the lead role in finding appropriate licensed homes or licensed care for children and placing them there;
- c) Provide assistance to families to prevent out of home placement and to reunite families;
- d) Filing petitions for child in need of care, on behalf of the Port Gamble S'Klallam Tribe;
- e) Prepare reports and appear in court as required under this code and by the Court;
- f) Coordinate and communicate with all agencies and departments involved in the protection of children;
- g) Assist Law Enforcement in investigations, upon request;
- h) Appear in state and other tribes' courts as experts and on transfer of jurisdiction cases.

[HIST: Resolution No. 90 A 35, passed 5/8/90. Resolution No. 09-A-057, passed 05/12/09, amended this section to authorize program to place children in licensed home care and clarified authorization to file petitions on PGST's behalf]

EMERGENCY PLACEMENT OF CHILDREN

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

A custody order from the Port Gamble S'Klallam Court is required before any agency or person outside the Tribe removes or places a child, in an emergency situation. (Court orders for non-emergency situations are also required and are covered later in this title.) Tribal law enforcement may obtain such an order if there is sufficient time before the removal or placement is necessary.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.02.12 Emergency Custody Orders - Contents

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

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

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.02.13 Emergency Custody Orders - Service and Duration

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.02.14 Request for First Hearing

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

- a) The name, date of birth, permanent address, and tribal status of the child and his or her parent, custodian, or guardian;
- b) The facts establishing the Court's jurisdiction;
- c) A statement of the facts which support the allegation that the child is in need of care; and
- d) The location of the child and the time taken into custody. The location of the child does not have to be shared with the parent if it would endanger the child.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.02.15 First Hearing - Time, Notice

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.02.16 First Hearing - Findings to be Made by the Court

The Court shall make the following determinations at the hearing:

- a) The tribal status of the child;
- b) Whether there is probable cause to believe the child is in need of care;
- c) The best interest of the child and the Tribe with regard to any action to be taken;
- d) Whether out-of-home placement shall be continued for the protection of the child or if the child can safely be returned to the home;
- e) Whether interim orders for the protection of the child and/or the family should be made while further proceedings are being considered. The Court may issue restraining orders; evaluation and treatment (including involuntary residential treatment) of substance abuse, mental illness, and emotional disturbance; parenting classes; mandatory school attendance; visitation orders; child support orders and other service or activities for the benefit of the child and his or her family. The Court may make a particular placement conditional on compliance with any of its orders; and
- f) The parties shall be ordered to keep the Court informed as to any changes in their whereabouts and mailing addresses.

[HIST: Resolution No. 90 A 35, passed 5/8/90. Resolution No. 02 A 098, passed 9/10/02 amended this section to add child support to the list of interim orders the court may make.]

16.02.17 Placement Preferences for Out of Home Placement

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

- a) With a member of the child's extended family;
- b) With a member of the child's tribe;
- c) A person from another tribe; or
- d) In emergency placements, any other safe place.

Placement of a child with anyone who is not a member of the Port Gamble S'Klallam Tribe or who does not reside on the Port Gamble S'Klallam Reservation shall be contingent on the person's written agreement to accept the jurisdiction of the Port Gamble S'Klallam Court and to

cooperate fully with tribal law enforcement and the Indian Child Welfare Worker's office.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.02.18 Scheduling a Fact Finding Hearing at First Hearing

If it appears that a petition for Fact Finding will soon be filed, based on the findings at the First Hearing, the Court shall set a time and date for a Fact Finding Hearing and shall so notify the parties at the conclusion of the First Hearing. Notice of the hearing shall be provided to any party who was not present at the First Hearing.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

FACT FINDING HEARINGS

16.02.19 Purpose

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

16.02.20 Contents and Filing of the Petition

A petition for Fact Finding Hearing shall be filed by Tribal Law Enforcement or other person authorized by the Tribe to file the petition and shall include:

- a) The name, date of birth, permanent address, and tribal status of the child and his or her parent, custodian, or guardian;
- b) The facts establishing the Court's jurisdiction;
- c) A detailed statement of the facts and reasons which support the allegation that the child is in need of care. If a request for a First Hearing was filed, it may be incorporated in this petition; and
- d) The location of the child and the time taken into custody. The location of the child does not have to be disclosed if it would endanger the child.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.02.21 Time and Notice of Hearing

The Court shall set the date for the hearing to take place within 35 days the date the petition is filed. The Court Clerk shall provide notices of hearing to all parties at least five working days before the hearing. The notice shall include the date, time and place of the hearing along with a

copy of the petition. The Indian Child Welfare Worker and Tribal Law Enforcement are responsible for letting the Court Clerk know as early as possible who the parties are so timely notice of the hearing can be given.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.02.22 Evidence and Burden of Proof

Rules of evidence and burden of proof shall be the same as those which apply to civil actions before the Port Gamble S'Klallam Court.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.02.23 Agreed Order

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

- a) Explain the proposed agreed order in detail and the consequences of the person's failure to comply with agreed terms;
- b) Assure that the person's consent to the proposed order is not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person;
- c) Explain the person's right to a spokesperson/ counsel;
- d) Explain that the Tribe has the burden of proving the allegations in the petition and that the person does not have to agree to the proposed order;
- e) Explain that once the person agrees to the proposed order and it is signed and entered by the Court, it will be too late for the person to change his or her mind.

The in-chambers conversation need not be recorded. If the parent wants a friend, family member, or other people to be present, the judge shall allow it after first speaking alone with him or her. If the Court finds that any consent was the result of fraud or duress, the agreed order shall be vacated.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

FAMILY PROTECTION PLAN

16.02.24 Suggested Family Protection Plan

The Indian Child Welfare Worker shall prepare a written plan describing all reasonable and appropriate alternatives for caring for the child and assisting his or her family. It shall explain why the plan is necessary and its benefits to the child and the family. It shall fully explain any recommendations for out-of-home placement of the child. The professional opinions of all persons consulted shall be included, including the Port Gamble S'Klallam Child Support Program's recommendation, if any, regarding establishment or modification of child support. The Indian Child Welfare Worker shall file the report with the Court and provide copies to all parties at least five (5) days before any hearing on the Family Protection Plan.

[HIST: Resolution No. 90 A 35, passed 5/8/90. Resolution No. 02 A 098, passed 9/10/02 amended this section to add child support provisions to the family protection plan.]

16.02.25 Other Suggested Plans

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.02.26 Hearing to Decide the Family Protection Plan

A hearing shall be held to decide what plan will best meet the needs of the child and assist the child's family. This hearing may take place right at the end of the Fact Finding Hearing or may take place up to thirty-five (35) days from the date of the Fact Finding Hearing. The Court shall determine the scheduling and shall cause notices of hearing to be served on all parties.

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.02.27 Court Ordered Family Protection Plan (Disposition)

If a child is in need of care, the Court shall order a Plan for his or her protection and well-being. The Plan shall either allow the child to remain with his or her parent, guardian, or custodian or order an out-of-home placement consistent with the placement preferences in section 16.02.17.

The Court may make any placement conditional on compliance with its orders.

The Court shall make any other orders necessary for the protection and well-being of the child and family. Such orders may include but are not limited to: restraining orders; evaluation and treatment (including involuntary residential treatment) of substance abuse, mental illness, and emotional disturbance; parenting classes; mandatory school attendance; visitation orders; child support orders; and other services or activities for the benefit of the child and his or her family. In those cases where collection of child support would be detrimental to the well being of the child, there shall be a \$0 child support.

[HIST: Resolution No. 90 A 35, passed 5/8/90. Resolution No. 02 A 098, passed 9/10/02 amended this section to add child support provisions.]

16.02.28 Review Hearings

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.02.29 Planned Living Arrangement Hearing

The Court shall conduct a hearing to review its Plan twelve (12) months after the child has been taken into custody and entered licensed care. The Court shall review whether the parties are complying with the Plan, determine whether to return the child home, to continue out-of-home placement, or whether another planned living arrangement is in the best interests of the child. The Court will also determine if reasonable efforts were made to support the planned living arrangement, and if modification is necessary to protect the child and strengthen the family.

[HIST: Resolution No. 09-A-057, passed 05/12/09 added new section: 16.02.29 to review a hearing within twelve months to assess planned living arrangements].

Chapter 16.03 Guardianship

16.03.01 Purpose

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

For example, guardianship may be used to give a child's grandparents authority to enroll a child in school and obtain medical care for him or her. A young mother may wish to use guardianship rather than give a child up for adoption. Foster families may petition for guardianship if it appears the child will not be returning to the parent in the near future. A guardianship may be desirable if a child's parents are dead or have abandoned the child. Another jurisdiction may have terminated the parental rights of the parents but have not arranged for or completed an adoption. This list is by way of example only and is not intended to limit the uses of guardianship.

Guardianship for adult persons will be treated elsewhere in the Port Gamble S'Klallam Law and Order Code.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.03.02 Petition for Guardianship - Who May File

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.03.03 Petition - Contents

A petition for appointment of a guardian shall include:

- a) The name, birthdate, residence, and tribal status of the child who is the subject of the petition;
- b) The name, birthdate, residence, and tribal status, if known, of the child's parent(s) and of the petitioner(s);

- c) If the child is residing with someone other than a parent, the location and length at that location; and
- d) A statement by the petitioner(s) of the facts and reasons supporting his or her request to be appointed as a guardian.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.03.04 Setting the Hearing

When the Court receives the petition it shall set a hearing date, which shall not be more than forty (40) calendar days after the Court received the petition, unless continued for good cause.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.03.05 Notice of Hearing

Notice of hearing shall be given at least twenty (20) calendar days before the hearing.

The notice shall include the date, time, and place of the hearing and a copy of the petition. The notice shall be served on:

- a) The petitioner(s);
- b) The child;
- c) The child's parent(s);
- d) The presenting officer or other designated representative of the Port Gamble S'Klallam Tribe;
- e) Any person the Court deems necessary for proper adjudication. The Court may discover that additional persons should be notified after the guardianship proceedings are in progress. The Court may continue the proceedings in order to give those persons notice;
- f) Any person the parties believe necessary for the hearing; and
- g) If the child is not enrolled in the Port Gamble S'Klallam Tribe, any tribe the child is enrolled in or is eligible for enrollment shall be notified.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.03.06 Guardianship Report - Preparation

The petitioner(s) shall arrange to have a guardianship report prepared by the Tribe's Indian Child Welfare program, by the Department of Social

and Health Services, or by another professional who is qualified to prepare such report. The agency preparing the report shall conduct a complete home study and shall consult with the child's parent(s); all health, education, and social service personnel who have had prior professional contacts with the child; and with the petitioner(s) to determine whether appointment of a guardian would be in the best interest of the child. The report shall contain the recommendation of the Port Gamble S'Klallam Child Support Program, if any, regarding establishment or modification of child support. A check of the criminal records, if any, of the petitioners shall be requested from state and tribal law enforcement authorities. Evidence of alcohol and drug abuse shall be described. The guardianship report shall be in writing and contain the professional opinions of all persons consulted.

[HIST: Resolution No. 90 A 35, passed 5/8/90. Resolution No. 02 A 098, passed 9/10/02 amended this section to add child support provisions.]

16.03.07 Guardianship Report - Service

Petitioner(s) shall file the guardianship report with the Court at least ten (10) calendar days before the hearing. The Court Clerk shall provide copies of the report to all parties at least five days before the hearing.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.03.08 Additional Reports

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.03.09 Guardianship Hearing - Conduct

The hearing shall be private and closed. Only those persons the Court finds to have a legitimate interest in the proceedings may attend. The Court shall hear testimony to determine whether guardianship is in the best interest of the child and the tribal community. The Court shall consider all guardianship reports submitted for review. All parties shall be given the opportunity to contest the factual contents and conclusions of the guardianship reports.

[HIST: Resolution No. 90 A 35, passed 5/8/90. Resolution No. 02 A 098, passed 9/10/02 amended this section to add child support provisions.]

16.03.10 Grounds for Appointing a Guardian and Burden of Proof

The Court may appoint a guardian when: 1) the parent(s) of the child has/have consented in writing to the guardianship; the parent is dead; or

the child is in need of care as defined under this code; and 2) the following conditions have been proved, by the greater weight of the evidence:

- a) Appointment of a guardian is in the best interest of the child and the tribal community; and
- b) That the petitioner(s) can provide appropriate and adequate parental care for the child.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.03.11 Placement Preference

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

- a) A member of the child's extended family;
- b) A member of the Port Gamble S'Klallam Tribe or of the Port Gamble S'Klallam tribal community which shall include persons living on or near the Port Gamble S'Klallam Indian Reservation who participate in tribal activities and are considered part of the tribal community, based on evidence presented at the hearing;
- c) A member of another Indian tribe; or
- d) If the above criteria cannot be met, for good cause shown, placement may be made with any person who has knowledge of and a desire to foster the child's tribal affiliation and special needs.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.03.12 Enrollment Prior to Appointment of Guardian

If a child is not enrolled but is eligible for enrollment or membership in an Indian Tribe, the Indian Child Welfare Worker (or the Court Clerk, in the absence of an Indian Child Welfare Worker) shall assist in making application for membership or enrollment of the child. If an objection to enrollment or membership is filed, the Court shall set the matter for hearing, notify the parent(s), and make a determination based on the best interest of the child.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.03.13 Order of Appointment - Powers of Guardian

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

- a) The guardian shall assure that the child receives adequate food, clothing, health and other professional care, shelter, and education, as needed and appropriate.
- b) The authority to consent to marriage and to enlistment in the armed forces of the United States;
- c) The authority to consent to an adoption if there are no living parents or if all parental rights have been terminated by a court of competent jurisdiction;
- d) A guardian is morally responsible for acts of the child. His or her legal liability for acts of the child shall be limited to actual damage caused by the child while the child is living with the guardians (e.g. the guardian is not responsible for the child's acts if the child has run away);
- e) A guardian may bring lawsuits on behalf of the child and otherwise represent the child in legal proceedings if expressly authorized to do so by the Court, on a case by case basis;
- f) The guardians have a duty to provide timely informed consent to necessary medical procedures, except sterilization shall require prior Court approval;
- g) The guardian cannot enroll a child who is eligible for enrollment in the Port Gamble S'Klallam Indian Tribe, in another tribe without first obtaining court approval;
- h) The guardianship does not affect the child's inheritance rights;
- i) A guardian may petition the court for authority to do any act about which he is uncertain of his authority, and the Court may grant such authority after such notice and hearing, if any, as the Court may direct, if such appears to be consistent with the best interests of the child; and
- j) The authority to receive child support payments on behalf of the child and to assign the rights to those payments to the Port Gamble S'Klallam Tribe under Section 21.03.63 of this Code.

[HIST: Resolution No. 90 A 35, passed 5/8/90. Resolution No. 02 A 098, passed 9/10/02 amended this section to add child support provisions.]

16.03.14 Appointment of Guardian for a Child's Property

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.03.15 Existing Trusts

If the child's property is subject to a trust (for example, where a parent has died leaving property to a child in a trust set up in the will), the guardian is bound by the trust provisions. The Court has the power to review any trust in connection with appointment of a guardian and to impose any protections necessary to enforce the trust, to insure that the guardian fully and regularly accounts for trust funds, and to see that the funds are properly managed.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.03.16 Removal of Guardian

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.03.17 Creating a Tribal Trust

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

- a) The Tribe shall place the trust funds in a separate, safe, interest bearing account such as those used by the Tribe for its other funds. The account shall be a "blocked account" which allows disbursement only upon order of the Port Gamble S'Klallam Community Court. The account shall be identified in the name of the Port Gamble S'Klallam Tribe as trustee for the named child or children. The funds shall at all times remain in the exclusive jurisdiction of the Port Gamble S'Klallam Tribe.
- b) The purpose of the trust shall be to preserve the principal and interest until the child is eligible to receive his or her share of the funds at twenty-one (21) years of age.

- c) The child's guardians, appointed under section 16.03.13 shall be financially responsible for the child's needs and for arranging all available benefits and services for which the child is eligible. No portion of the trust funds may be disbursed prior to the child's twenty-first (21st) birthday except upon a showing of extreme hardship to the child. The Tribe or the guardian may petition the Court in such a case to request a hearing. If the Court finds that extreme hardship to the child exists, and no other resources are available to meet the child's needs, it may order disbursement of a specified amount of funds for a specified purpose. The Court shall require a written accounting to be filed with the Court documenting all expenditures. If more than one disbursement will be necessary (e.g. monthly payments) the Court may so order.
- d) The Tribe shall provide the Court with an annual accounting of the trust and an accounting prior to and after any disbursement, including a final distribution to a child upon reaching age twenty-one.
- e) A child shall, on or after his 21st birthday, petition the Court to order distribution of his share, free of trust. The child shall provide the Court with a certified copy of his or her birth certificate or an affidavit from Tribal Enrollment as proof of age.
- f) If there is more than one child whose funds are in the same trust, each child may petition for his or her share as he or she comes of age, with the remaining funds remaining in trust for those who have not reached age twenty-one (21).
- g) If a child dies before reaching age twenty-one (21), his or her share shall be paid to his or her estate. If his or her heirs are other children in the trust, the funds may remain in trust, subject to approval of the Port Gamble S'Klallam Community Court.
- h) All funds, while held in trust under this section, are exempt from levy, execution, forfeiture, garnishment, seizure, lien, claim, bankruptcy, or encumbrance whatsoever; they cannot be assigned to another or used as collateral or security. Any agreement purporting to use or obligate funds in any of the foregoing ways is void.
- i) The Tribe shall serve as Trustee without compensation. Reasonable bank fees shall be payable from the trust funds.
- j) The Tribe may petition the Court at any time to clarify its obligations under this section.
- k) All records and files maintained in connection with this section shall be confidential.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.03.18 Change of Address - Limits, Notice

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.03.19 Visitation

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.03.20 Court Review

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.03.21 Termination of Guardianship

Generally, a guardianship shall terminate upon the death, marriage, adoption, or eighteenth birthday of the child (unless continued by the Court under the Port Gamble S'Klallam rules for adult guardianship); or upon order of the Court. Guardians of tribal trusts shall serve until all trust funds have been distributed under the terms of the trust.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

Chapter 16.04 Termination of Parental Rights

16.04.01 Purpose

The Port Gamble S'Klallam Tribe has not traditionally provided for the termination of a parent's rights. It is currently the custom of the Tribe to view involuntary termination of a parent's rights as a last resort and a process to be used only when an adoption has been arranged. This chapter addresses both involuntary termination of a parent's rights and termination of parental rights by consent of the parent in the course of an adoption.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.04.02 Petition for Termination of Parental Rights - Who May File

Any person at least eighteen (18) years old may file a consent to allow the adoption of his or her child. Only a representative of the Port Gamble S'Klallam Tribe may file a petition for involuntary termination of a parent's rights.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.04.03 Petition - Contents

A petition for termination of a parent's rights shall include:

- a) The name, birthdate, residence, and tribal status of the child who is the subject of the petition;
- b) The name, birthdate, residence, and tribal status, if known, of the child's parent(s), guardian(s), or custodian(s);
- c) If the child is residing with someone other than a parent, the location and length at that location; and
- d) A statement by the petitioner (whether the petitioner is the Tribe or a parent) of the facts and reasons supporting the request.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.04.04 Setting the Hearing

When the Court receives the petition it shall set a hearing date, which shall not be more than forty (40) calendar days after the Court received the petition, unless continued for good cause.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.04.05 Notice of Hearing

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

- a) The petitioner;
- b) The child;
- c) The child's parent(s);
- d) The presenting officer or other designated representative of the Port Gamble S'Klallam Tribe;
- e) Any person the Court deems necessary for proper adjudication. The Court may discover that additional persons should be notified after the proceedings are in progress. The Court may continue the proceedings in order to give those persons notice; and
- f) Any person the parties believe necessary for the hearing.
- g) If the child is not enrolled in the Port Gamble S'Klallam Tribe, any tribe the child is enrolled in or is eligible for enrollment shall be notified.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.04.06 Pre-Termination Report - Preparation

The petitioner shall arrange to have a pre-termination report prepared by the Indian Child Welfare program within the Tribe, by the Department of Social and Health Services, or by another professional who is qualified to prepare such a report. The agency preparing the report shall conduct a complete home study and shall consult with the child's parent(s); all health, education, and social service personnel who have had prior professional contacts with the child; and with the petitioner(s) to determine whether termination of the parent's rights would be in the best interest of the child. The report shall be in writing and contain the professional opinions of all persons consulted. The Court may waive the requirement of a pre-termination report in cases where a parent is consenting, provided that all requirements for a proper consent under this chapter have been met.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.04.07 Pre-Termination Report - Service

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.04.08 Additional Reports

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.04.09 Termination Hearing - Conduct

The hearing shall be private and closed. Only those persons the Court finds to have a legitimate interest in the proceedings may attend. The Court shall consider all reports submitted for review. All parties shall be given the opportunity to testify and to contest the factual contents and conclusions of the pre-termination report(s).

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.04.10 Grounds for Termination and Burden of Proof

The Court may order termination of a parent's rights only when an appropriate adoptive home is available and adoption proceedings have been filed in conjunction with the termination proceedings. In addition, the Court must first approve the parent's consent as provided in this chapter or in cases of involuntary termination the Tribe must prove by clear and convincing evidence of each of the following:

- a) That the parent has:
 - (1) Abused the child physically or sexually, ,
 - (2) Abandoned the child,
 - (3) Chronically neglected the child, or has
 - (4) Chronically emotionally maltreated the child;
- b) That termination of the parent's rights and adoption are in the best interest of the child and of the tribal community;
- c) That the Tribe has offered or helped arrange for appropriate resources to help the parent care appropriately for the child; and

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.04.11 Consent

Consent of a parent to terminate his or her rights to a child is not valid unless:

- a) The parent is at least eighteen (18) years old;
- b) The parent has received counseling from an appropriate professional who has explained the consequences of terminating his or her rights, has explored all available services to help the parent care for the child (such as parenting classes and substance abuse treatment), and has explored alternatives to termination and adoption, such as guardianship;
- c) The parent orally explains his or her understanding of the meaning of termination of parental rights to the judge and the judge certifies that the terms and consequences of the consent were fully explained and were fully understood by the parent; and
- d) The consent was given no sooner than thirty (30) days after the birth of the child. This does not mean the child cannot be placed with the prospective adoptive parents or other care giver during the 30 day period.

Any consent may be withdrawn prior to the entry of a final decree of adoption and, if no other grounds exist for keeping the child from the parent, the child shall be returned to the parent.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.04.12 Enrollment Prior to Termination

If a child is not enrolled but is eligible for membership in an Indian Tribe, the Indian Child Welfare Worker (or the Court Clerk, in the absence of an Indian Child Welfare Worker) shall assist in making application for membership or enrollment of the child. If an objection to enrollment or membership is filed, the Court shall set the matter for hearing, notify the parent(s), and make a determination based on the best interest of the child.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.04.13 Disposition

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

Chapter 16.05 Adoption

16.05.01 Petition for Adoption - Who May File

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

"Spouse" for purposes of this code includes each partner to a "stable relationship" as that term is defined by Port Gamble S'Klallam housing eligibility requirements.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.05.02 Petition - Contents

The adoption petition shall include:

- a) The name, birthdate, residence, and tribal status of the child who is the subject of the petition;
- b) The name, birthdate, place and duration of residence, and tribal status of the petitioner(s);
- c) The name, birthdate, residence, and tribal status of the parent(s);
- d) The relationship, if any, of the petitioner(s) to the child;
- e) The names and addresses, if known, of all persons whose consent is required and proof of such consent;
- f) A description of all previous court proceedings involving the care or custody of the child to be adopted and the results of these proceedings along with copies of all court orders including orders terminating a parent's rights to the child;
- g) The reasons the child is available for adoption and why the petitioner(s) desires to adopt the child; and
- h) Any request the petitioner(s) has for changing the child's name.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.05.03 Availability for Adoption

A child may be adopted only if he or she has no parents by reason of death or by voluntary (by consent) or involuntary termination of the parent child relationship. The Court may conduct a hearing as provided under chapter 16.04 of this code, prior to or together with an adoption hearing.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.05.04 Setting the Hearing

When the Court receives the petition for adoption it shall set a hearing date, which shall not be more than forty (40) calendar days after the Court received the petition, unless continued for good cause shown.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.05.05 Notice of Hearing

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

- a) The petitioner(s);
- b) The child;
- c) The child's parent(s), guardian, or custodian;
- d) The presenting officer or other designated representative of the Port Gamble S'Klallam Tribe;
- e) Any person who was listed in the petition whose consent to the adoption is necessary;
- f) The Port Gamble S'Klallam Business Committee;
- g) Any person the Court deems necessary for proper adjudication. The Court may discover that additional persons should be notified after the adoption proceedings are in progress. The Court may continue the proceedings in order to give those persons notice;
- h) Any person the parties believe necessary for the hearing; and
- i) If the child is not enrolled in the Port Gamble S'Klallam Tribe, any tribe the child is enrolled in or is eligible for enrollment shall be notified.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.05.06 Adoption Report - Preparation

The petitioner(s) shall arrange to have a pre-adoption report prepared by the Tribe's Indian Child Welfare program, by the Department of Social and Health Services, or by another professional who is qualified to prepare such report. The adoption report shall be in writing and contain the professional opinions of all persons consulted. The agency preparing the report shall conduct a complete home study including all information concerning:

- a) The physical and mental condition of the child, petitioner(s) and person's living in the petitioner's home;
- b) The circumstances of the voluntary or involuntary termination of the parent's rights to the child or of the parent's death;
- c) The home environment, family life, access to health services, and resources of the petitioner(s);
- d) The child's and petitioner's cultural heritage and tribal status;
- e) The marital status of the petitioner(s);
- f) The names and ages of the petitioner's children and of any other persons residing with the petitioner(s);
- g) Information from health, education, and social service personnel who have had prior professional contacts with the child and petitioner(s);
- h) A check of the criminal records, if any, of the petitioner(s) shall be requested from state and tribal law enforcement authorities;
- i) Any evidence of alcohol and drug abuse in petitioner's household;
- j) The recommendation, if any, of the Port Gamble S'Klallam Business Committee regarding the adoption; and
- k) Any other facts and circumstances relating to whether or not the adoption should be granted.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.05.07 Adoption Report - Service

The person preparing the pre-adoption report shall file it with the Court at least ten (10) calendar days before the hearing. The Court Clerk shall

provide copies of the report to all parties at least five days before the hearing.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.05.08 Additional Reports

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.05.09 Adoption Hearing - Conduct

The hearing shall be private and closed. Only those persons the Court finds to have a legitimate interest in the proceedings may attend. The Court shall consider all adoption reports submitted for review. All parties shall be given the opportunity to testify.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.05.10 Grounds for Entering Decree of Adoption

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

- a) Adoption is in the best interest of the child and the tribal community; and
- b) That the petitioner(s) can provide appropriate and adequate parental care for the child; and
- c) That the Port Gamble S'Klallam Business Committee does not oppose the adoption.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.05.11 Placement Preference

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

- a) A member of the child's extended family;
- b) A member of the Port Gamble S'Klallam Tribe or of the Port Gamble S'Klallam tribal community which shall include persons living on or near the Port Gamble S'Klallam Indian Reservation who participate in tribal activities and are considered part of the tribal community, based on evidence presented at the hearing;

- c) A member of another Indian tribe; or
- d) If the above criteria cannot be met, for good cause shown, placement may be made with any person who has knowledge of and a desire to foster the child's tribal affiliation and special needs.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.05.12 Enrollment Prior to Entry of Adoption Decree

If a child is eligible for membership in an Indian Tribe, the Indian Child Welfare Worker (or the Court Clerk, in the absence of an Indian Child Welfare Worker) shall assist in making application for membership or enrollment of the child. If an objection to enrollment or membership is filed, the Court shall set the matter for hearing, notify the parent(s), and make a determination based on the best interest of the child.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.05.13 Denial of Adoption Petition

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.05.14 Decree of Adoption

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

- a) A statement that the child is available for adoption and any order the Court may make concerning recognition of the consents or orders terminating parental rights filed in the case;
- b) A statement that the child is, for all intents and purposes, the child, legal heir, and lawful issue of the petitioner(s);
- c) The marital status of the petitioner(s);
- d) The full name of the child upon adoption;
- e) That such adoption will remain temporary for one year from the date of entry of the decree, and shall become permanent at the expiration of the one year period;

- f) Orders directing the Court Clerk to forward a certified copy of the decree to the appropriate Bureau of Vital Statistics for purposes of obtaining a corrected birth certificate when the adoption becomes permanent in one year; and
- g) A statement that the records of the proceeding shall remain sealed unless otherwise ordered by the Court.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.05.15 Effect of Decree of Adoption

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

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.05.16 Visitation

Adoptive parents shall be encouraged to help the child maintain positive relationships with the biological family. However, the adoptive parents shall have the exclusive right and power to decide the terms, if any, of visitation by any person with the child.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

16.05.17 Adoption Records

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

- a) The Bureau of Indian Affairs may have access to such information as is necessary to protect inheritance rights or enrollment status of the adopted child (and his or her descendants);
- b) A copy of the decree of adoption, but not the Findings of Fact and Conclusions of Law, may be given to a Bureau of Vital Statistics as provided in this chapter; and
- c) An adopted child may petition the Court, upon reaching eighteen years of age, for release of specifically requested information, limited to: the biological parents' name, address, tribal status and social security number; and the names and relationship to the child of

relatives, for the purpose of medical need or medical history information or to assist in making a relative placement of a child of the adoptive child.

[HIST: Resolution No. 90 A 35, passed 5/8/90]

Chapter 16.06 Domestic Violence

[HIST: Source - Passed 1/15/86 by the Business Committee. Amended and renumbered by Resolution 04 A 089, passed 9/14/04. Cross Reference: Chapter 16.07, Protection of Vulnerable Adults and Victims of Domestic Violence; Section 21.04.14, Emergency and Temporary Orders – Content (Divorce); Section 21.05.16, Emergency and Temporary Orders – Content (Child Custody).]

[HIST: Source Resolution 18-A-101 passed 9/17/18 created new Title 15 Domestic Violence and repealed Chapter 2.10 Domestic Violence Criminal Procedures and Chapter 16.06 Domestic Violence.]

Chapter 16.07 Protection of Vulnerable Adults

16.07.01 Purpose

There are elders and other vulnerable adults within the jurisdiction of the Tribe who are at risk of abuse, neglect and exploitation and may need the protection of the Court. The Tribe intends to prevent and remedy the abuse, neglect or exploitation of elders and other vulnerable adults by providing a procedure for identifying these persons and providing the services necessary for their well-being.

The Tribe further finds that many of these elders and other vulnerable adults may be home bound or otherwise unable to represent themselves in Court or to retain legal counsel in order to obtain the relief available to them under this chapter of the Law and Order Code.

In addition, elders and other vulnerable adults may need the assistance of a guardian or protective payee, or both, to conduct personal business or to obtain the services necessary for his or her well-being. This code provides two ways to accomplish this: at the Tribe's request (section 16.07.23) or at the elder's or other interested person's request using the "guardianship for adults" provisions.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.07.02 Definitions

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

- a) Abuse: Physical, verbal, or mental mistreatment, intimidation or injury which harms or threatens a person's well being.
- b) Consent: Written consent granted after the person has been fully informed of the nature of the services to be offered and understands that receiving services is voluntary.
- c) Exploitation: The illegal or improper use of a vulnerable adult or that adult's resources for another person's profit or advantage. Exploitation includes but is not limited to:
 - 1) Any unauthorized use or occupation of the vulnerable adult's property, food, telephone, utility services, residence, land assignment, vehicles, money or other resources. Specific examples of unauthorized use include use or sale of illegal

drugs in or on the adult's property, consuming alcohol and partying in or on the adult's property without the approval of the adult, and failure to repay loans of money or other property. These examples shall not limit the interpretation of unauthorized use.

- 2) Use of a vulnerable adult's possessions or utilities which exceeds the authorization he or she has given.
- 3) Unreasonable imposition on the vulnerable adult's time or resources, such as leaving children in the care of the vulnerable adult for extended periods or under circumstances in which the adult cannot adequately care for the children.
- d) Neglect: Action or inaction which leaves the vulnerable adult without the means or ability to obtain food, clothing, shelter or health care and to be able to maintain minimum physical and mental health. Neglect also includes, but is not limited to, any interference with the provision of social and health services to maintain the vulnerable adult's physical and mental health.
- e) Protective Payee: A person appointed by the Court to receive and disburse funds on behalf of another to protect that person's financial resources.
- f) Vulnerable Adult: Elders over the age of 55 and persons 18 years of age or older who do not have the functional, mental, emotional or physical ability to protect and care for himself or herself.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.07.03 Reporting Abuse, Neglect and Exploitation of Adults

The care of our elders and vulnerable adults is a family and a tribal responsibility. Any person who has reason to believe that a vulnerable adult has suffered abuse, neglect, or exploitation, or is otherwise in need of protective services may report such information to the Vulnerable Adult Case Manager, to the Tribe's Police Department, to the Director of Child and Family Services, or to any attorney in the Tribe's legal department.

Reporting under this section is mandatory for tribal employees, for tribal elected officials, and for contractors with the Tribe who perform services to the community in the areas of education, health and human services, for law enforcement, and for members of the clergy.

[HIST: Resolution No. 94 A 134, passed 11/8/94. Resolution No. 17-A-092, passed, 9/11/17, changed this section to allow any person, not just tribal and community members, to report suspected abuse.]

16.07.04 Contents of the Report

Unless there is a judicial proceeding or the person consents, the identity of the person making the report is confidential. The reports made under this code shall contain the following information if known:

- 1) The name and address of the vulnerable adult;
- 2) The nature and extent of the suspected abuse, neglect, or exploitation, including the date, time, and location of the events, if known;
- 3) Evidence of previous abuse, neglect, or exploitation;
- 4) The name and address of the person making the report; and
- 5) Any other helpful information.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.07.05 Immunity

All persons who report or testify about the abuse, neglect, or exploitation of a vulnerable adult are immune from civil liability and criminal prosecution. Conduct complying with the reporting and testifying provisions shall not be deemed a violation of any confidential communication privilege.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.07.06 Sanctions

Any person who is required to report abuse or neglect under section 16.07.03 and who knowingly fails to report the abuse, neglect, or exploitation or exploitation of a vulnerable adult is subject to a civil fine not to exceed \$5,000.00.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.07.07 Penalties for Bad Faith Reporting, Retaliation, or Intentionally Interfering with an Investigation

A person who makes a report of alleged abuse or neglect knowing it to be false has committed a civil infraction. Any person who retaliates by intimidating, threatening to cause or causing bodily, emotional, property, or financial harm against a person who reports or investigates abuse or neglect, has committed a civil infraction. It is a civil infraction to interfere intentionally with a lawful investigation of suspected abuse or neglect of an elder or vulnerable adult. The Court shall assess the appropriate civil

penalty of up to \$5,000 after petition by the Tribal prosecutor, notice, an opportunity for hearing, and a determination that the person made a report in bad faith, or that interference or retaliation as set out in this section has occurred. Notice of such determination shall also be provided to the person's Tribal employer, and appropriate licensing agencies for appropriate discipline. This section does not change or affect penalties that may be imposed on mandatory reporters under other applicable laws or licensing requirements.

[HIST: Resolution No. 17-A-092, passed 9/11/17, created this section to enforce a penalty on those who make intentionally false reports of abuse.]

16.07.08 Open Communication Policy

The policy of the Port Gamble S'Klallam Tribe toward investigation of the abuse, neglect or exploitation of a vulnerable adults is one of open communication between agencies and departments for the protection of vulnerable adults while respecting the confidentiality of statements by victims, their families, and reporters of abuse, neglect, exploitation. Where there is a conflict between confidentiality and the need for communication, protection of the vulnerable adult shall be the overriding consideration.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.07.09 Confidentiality and Immunity of Reporting Party

A person acting in good faith shall be immune from any claim or cause of actions stemming from or arising out of making a report under this chapter. The identity of the reporter of abuse or neglect under this chapter is confidential and shall not be released unless the reporter consents, or the Court determines that the need of the elder or the vulnerable adult exceeds the reporter's right to privacy and mandates disclosure. The reporter has the opportunity to petition and be heard at a closed evidentiary hearing with regard to any such disclosure, and disclosure shall be limited to the extent necessary to protect the elder or vulnerable adult.

All interviews, case notes, and other records in the Vulnerable Adult Case Manager's file are confidential and shall not be released unless the Court determines that the need of the elder or the vulnerable adult exceeds the right to privacy of persons named in the case file and mandates disclosure.

[HIST: Resolution No. 17-A-092, passed 9/11/17, created this section to allow for confidentiality in reporting abuse and to ensure that the Vulnerable Adult Case Manager's files are confidential unless the Court determines otherwise.]

16.07.10 Role of the Vulnerable Adult Case Manager

The Tribe's administrator or the Tribal Council shall designate an Vulnerable Adult Case Manager who shall be authorized to carry out activities specified under this code. The duties of the Vulnerable Adult Case Manager include but are not limited to:

- 1) Receive reports of abuse, neglect or exploitation of vulnerable adults.
- 2) Investigate reports of abuse, neglect or exploitation of vulnerable adults. The Vulnerable Adult Case Manager shall coordinate closely with Tribal Law Enforcement to ensure that any matters which may be criminal in nature are promptly referred to Tribal Law Enforcement for investigation.
- 3) Assist Law Enforcement in cases they are investigating, upon request. Work with Tribal Law Enforcement to ensure that appropriate protective services are provided to the vulnerable adult.
- 4) Accept referrals from Law Enforcement in cases where Law Enforcement believes there is insufficient evidence to refer the case for criminal prosecution and in cases where Law Enforcement and the Vulnerable Adult Case Manager believe a civil remedy will be more effective to protect the vulnerable adult.
- 5) Take the lead role in finding services for the protection and well being of vulnerable adults.
- 6) Develop a plan to assist vulnerable adults and their families to prevent future abuse, neglect or exploitation. This plan may be in the form of a contract between the parties or a recommendation to the court for a court ordered plan.
- 7) Prepare reports and appear in court as required under this code and as required by the Court.
- 8) Coordinate and communicate with all agencies and departments involved in the protection of vulnerable adults.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.07.11 Access to Investigate - Court Order

If access is denied to the Vulnerable Adult Case Manager when investigating an allegation of abuse, neglect or exploitation of a vulnerable adult by an individual, the Vulnerable Adult Case Manager may seek an order from the Court to prevent interference with the investigation.

Access to investigate criminal matters by Law Enforcement shall be governed by the criminal laws and procedures of the Port Gamble S'Klallam Tribe.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.07.12 Appointment of Guardian Ad Litem

The Court may appoint a guardian ad litem to represent the interests of an adult in vulnerable adult protection proceedings or guardianship proceedings, whenever the Court deems necessary.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

EMERGENCY ORDERS

16.07.13 Emergency Orders for the Protection of Vulnerable Adults - Petition

The Vulnerable Adult Case Manager, Law Enforcement or the vulnerable adult may file a petition for an emergency order of protection of a vulnerable adult. The Port Gamble S'Klallam Tribe may also file a petition for an order of protection on behalf of any vulnerable adult within the jurisdiction of the Port Gamble S'Klallam Tribe. The petition shall include the name and address of the petitioner, the specific facts and circumstances warranting protection under this Code, the name, address and age of the person known by the petitioner to be in need of protection; and the name address and age of the person from whom the vulnerable adult needs protection and his or her relationship to the vulnerable adult.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.07.14 Emergency Orders for the Protection of Vulnerable Adults - Probable Cause

The Court may issue an emergency order of protection of a vulnerable adult, without a prior hearing, upon filing a petition with a statement of facts showing probable cause to believe that:

- 1) The adult who is the subject of the petition is an elder over the age of 55 or is a person 18 years of age or older who do not have the functional, mental, emotional or physical ability to protect and care for himself or herself; and
- 2) The vulnerable adult has suffered abuse, neglect, or exploitation, or is otherwise in need of protective services and that his or her health, safety, and welfare will be seriously endangered if the petition is not granted.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.07.15 Emergency Orders for the Protection of Vulnerable Adults - Contents

The emergency order of protection of a vulnerable adult shall be signed by the judge or judicial officer and may:

- 1) Restrain any person from committing acts of abuse, neglect or exploitation with respect to the vulnerable adult;
- 2) Exclude any person from vulnerable adult's residence for a specified period;
- 3) Prohibit contact with the vulnerable adult by any person for a specified period;
- 4) Require an accounting of the disposition of the vulnerable adult's income or other resources; and
- 5) Restrain the transfer of property for a specified period.

Relief granted by an order of protection of a vulnerable adult shall be for a period fixed by the court. A full hearing on the order shall be provided in the fact finding hearing and may be revoked or modified in the vulnerable adult protection plan.

An emergency order of protection of a vulnerable adult may be transmitted by the judge via computer or fax, if the judge cannot be present on the Reservation.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.07.16 Emergency Orders for the Protection of Vulnerable Adults - Service and Duration

All persons restrained or otherwise subject to the emergency order for the protection of a vulnerable adult shall be personally served with a copy of the order by Law Enforcement. If Law Enforcement cannot locate the person within five (5) days, the Court, the Vulnerable Adult Case Manager and the vulnerable adult shall be notified. The order may be served by Law Enforcement up to two years after the date it was signed by the judge.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

FACT FINDING HEARINGS

16.07.17 Purpose

The Court shall conduct a Fact Finding Hearing to determine whether an adult is a vulnerable adult.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.07.18 Contents and Filing of the Petition

A petition for Fact Finding Hearing shall be filed by the Vulnerable Adult Case Manager, Law Enforcement or other person authorized by the Tribe to file the petition and shall include:

- a) The name, date of birth, and permanent address of the adult;
- b) The facts establishing the Court's jurisdiction; and
- c) A detailed statement of the facts and reasons which support the allegation that the adult is a vulnerable adult.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.07.19 Time and Notice of Hearing

The Court shall set the date for the hearing to take place within 35 days the date the petition is filed. The Court Clerk shall provide notices of hearing to all parties at least five (5) working days before the hearing. The notice shall include the date, time and place of the hearing along with a copy of the petition. The Vulnerable Adult Case Manager and Law Enforcement are responsible for letting the Court Clerk know as early as possible who the parties are so timely notice of the hearing can be given.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.07.20 Evidence and Burden of Proof

Rules of evidence and burden of proof shall be the same as those which apply to civil actions before the Port Gamble S'Klallam Court.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.07.21 Agreed Order

The parties to a Fact Finding Hearing may agree to a proposed order which resolves some or all of the issues of the case. One or more guardians or a protective payee may be appointed in an agreed order. A family meeting or other informal mediation process may be used to help reach an agreement. Before deciding whether to approve the agreed order, the judge may hold an in-chambers, ex parte discussion with the vulnerable adult or any person who will be subject to the order to:

- a) Explain the proposed agreed order in detail;

- b) Assure that the person's consent to the proposed order is not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person;
- c) Explain the person's right to a spokesperson/ counsel at his or her own expense;
- d) Explain that the Tribe has the burden of proving the allegations in the petition and that the person does not have to agree to the proposed order; and
- e) Explain that once the person agrees to the proposed order and it is signed and entered by the Court, it will be too late for the person to change his or her mind.

The in-chambers conversation need not be recorded. If the person wants a friend, family member, or other people to be present, the judge shall allow it after first speaking alone with him or her. If the Court finds that any consent was the result of fraud or duress, the agreed order may be vacated.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

VULNERABLE ADULT PROTECTION PLAN

16.07.22 Suggested Vulnerable Adult Protection Plan

The Vulnerable Adult Case Manager shall prepare a written plan describing all reasonable and appropriate alternatives for protecting the vulnerable adult and assisting his or her family. The plan shall explain why it is necessary and its benefits to the vulnerable adult and to the family. It shall fully explain any recommendations for removal from the home of any person found to have abused, neglected or exploited the vulnerable adult. It may recommend the appointment of one or more guardians or protective payees to assist the vulnerable adult to conduct personal business or to obtain the services necessary for his or her well-being. The professional opinions of all persons consulted shall be included. The Vulnerable Adult Case Manager shall file the report with the Court and provide copies to all parties at least five (5) days before any hearing on the Plan.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.07.23 Other Suggested Plans

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

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.07.24 Hearing to Decide on the Plan

A hearing shall be held to decide what plan will best meet the needs of the vulnerable adult and assist the family. This hearing may take place right at the end of the Fact Finding Hearing or may take place up to thirty-five (35) days from the date of the Fact Finding Hearing. The Court shall determine the scheduling and shall cause notices of hearing to be served on all parties.

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

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.07.25 Court Ordered Vulnerable Adult Protection Plan (Disposition)

The Court shall order a Plan for the protection and well-being of a vulnerable adult. The Plan may restrain or exclude from the vulnerable adult's home any person found to have abused, neglected or exploited the vulnerable adult. The Court may make the return to the home conditional on compliance with its orders.

The Court shall make any other orders necessary for the protection and well-being of the vulnerable adult and his or her family. Such orders may include but are not limited to: restraining orders; evaluation and treatment (including involuntary residential treatment) of substance abuse, mental illness, and emotional disturbance; and other services or activities for the benefit of the vulnerable adult and his or her family.

The Court may also appoint one or more guardians or a protective payee for the benefit of the vulnerable adult if the Court finds it is necessary to assist the vulnerable adult to conduct personal business or to obtain the services necessary for his or her well-being.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.07.26 Review Hearings

The Court shall conduct a hearing to review its Plan six months from the date of the order, or earlier upon motion of any party, and shall set a schedule for future periodic reviews. The Court shall review whether the parties are complying with the order and shall consider whether modification is necessary to protect the vulnerable adult.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.07.27 Proceedings Are Supplemental

Any proceeding under this title may be used in conjunction with any other civil or criminal code.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

Chapter 16.08 Guardianship For Adults

16.08.01 Purpose

The following sections of the code provide a process for empowering one or more persons to act on behalf of an adult who may need assistance in conducting personal business or in obtaining the services necessary for his or her well-being. It is intended that these provisions be applied with flexibility. The Court may appoint guardian(s) or protective payee(s) or a combination of these roles for the benefit of an adult.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.08.02 Petition for Adult Guardianship - Who May File

The Tribe, a family member or any other interested person may file a petition with the Court requesting that a guardian be appointed for an adult. The adult may file on his or her own behalf.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.08.03 Petition for Adult Guardianship - Contents

The petition shall include:

- a) The name, birth date, residence, and tribal status of the adult who is the subject of the petition;
- b) The name, birth date, residence, and tribal status of the petitioner(s) and his or her relationship to the adult;
- c) A statement explaining why the petitioner(s) believes the adult needs assistance in conducting personal business or in obtaining the services necessary for his or her well-being;
- d) The names, addresses and relationship of the adult's spouse and children, in any, and of any other family members or people who have been significantly involved in the care of the adult in the recent past;
- e) Whether a guardian has been appointed by another court;
- f) Whether the adult has a living will (directive to physicians) or has given anyone his or her power of attorney;

- g) Any recommendation the petitioner has regarding who should be appointed to assist the adult and to what extent the person(s) should be empowered to give that assistance; and
- h) If assistance with financial affairs is recommended, a description of the property, income and other financial resources, if known, shall be included.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.08.04 Setting the Hearing

When the Court receives the petition it shall set a hearing date, which shall not be more than forty (40) calendar days after the Court received the petition, unless continued for good cause.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.08.05 Notice of Hearing

Notice of hearing shall be given at least twenty (20) calendar days before the hearing, unless an earlier time is agreed to by the parties. The notice shall include the date, time and place of the hearing and a copy of the petition. The notice shall be served on:

- a) The petitioner(s);
- b) The adult;
- c) The adult's spouse and children, if any;
- d) The Vulnerable Adult Case Manager or other designated representative of the Port Gamble S'Klallam Tribe;
- e) Any other family members or people who have been significantly involved in the care of the adult in the recent past; and
- f) Any person the Court or the parties deem necessary for proper adjudication. The Court may discover that additional persons should be notified after the guardianship proceedings are in progress. The Court may continue the proceedings in order to give those persons notice.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.08.06 Guardianship Hearing - Conduct

The guardianship hearing is an opportunity for all parties to provide testimony or other evidence to help the Court determine whether the

appointment of a guardian or protective payee, or both, is necessary to assist the adult to conduct personal business or to obtain the services necessary for his or her well-being.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.08.07 Grounds for Appointing a Guardian - With Consent

The Court may appoint a guardian or protective payee when the adult has consented in writing.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.08.08 Grounds for Appointing a Guardian - Without Consent

The Court may appoint a guardian or protective payee without the adult's consent if the Court finds the adult cannot protect and care for himself or herself due to diminished functional, mental, emotional or physical ability.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.08.09 Evidence and Burden of Proof

Rules of evidence and burden of proof shall be the same as those which apply to civil actions before the Port Gamble S'Klallam Court.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.08.10 Agreed Orders

The parties to an Adult Guardianship Hearing may agree to a proposed order, which resolves some or all of the issues of the case. Before deciding whether to approve the agreed order, the judge shall hold an in-chambers, ex parte discussion with the adult to:

- a) Explain the proposed agreed order;
- b) Assure that the person's consent to the proposed order is not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person;
- c) Explain the person's right to a spokesperson/counsel;
- d) Explain that the person does not have to agree to the proposed order and that the case will then go to a full hearing on all the issues; and

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

The in-chambers conversation need not be recorded. If the adult wants a friend, family member, or other people to be present, the judge shall allow it after first speaking alone with him or her. If the Court finds that any consent was the result of fraud or duress, the agreed order shall be vacated.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.08.11 Order Appointing Guardian

Orders appointing guardians or protective payees shall be tailored for the adult's benefit. The Court shall have broad discretion in fashioning an order that will best meet the adult's needs and circumstances, subject to the following provisions:

- a) The Court shall identify who shall serve as the guardian or protective payee and shall specify his or her powers and duties.

If the adult has named a guardian in a durable power of attorney or has otherwise stated a preference, the Court shall honor the adult's choice unless good cause is shown.

- b) If there is more than one guardian or there is a protective payee and guardian(s), the Court shall state whether the duties are to be shared or whether each shall have separate duties.
- c) The Court shall set forth requirements for protective payees and any guardian vested with financial responsibilities to make an accounting to the Court and to the adult. This may include expenditure guidelines and limits, a schedule for reporting and any other requirements the Court finds necessary to protect the adult's financial resources.
- d) The Court may vest guardians with the duty to provide timely informed consent to necessary medical procedures, except placement of the adult in a nursing home shall require prior Court approval.
- e) The Court does not have authority to make any transfers of lot assignments.
- f) The Court shall state in all guardianship orders whether review hearings shall be required and, if so, the frequency of such hearings.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.08.12 Guardians May Petition Court for Clarification

The guardian(s) or protective payee may petition the Court for authority to do any act about which he is uncertain of his authority, and the Court may grant such authority after such notice and hearing, if any, as the Court may direct.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.08.13 Removal of Guardian/Protective Payee

The Court has the power to remove a guardian(s) or protective payee and appoint a replacement whenever necessary for the adult's benefit.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

16.08.14 Modification and Termination of Guardianship

Guardianships and appointment of protective payees may be modified by the Court for good cause upon motion of any party following notice and a hearing. Generally, a guardianship shall terminate upon the death of the adult or upon order of the Court. The Court may appoint the guardian or protective payee to administer the adult's estate after death if the person dies intestate.

[HIST: Resolution No. 94 A 134, passed 11/8/94]

Chapter 16.09 Attempted Suicide

16.09.01 Statement of Policy: Suicide Attempts

It is the policy of the Port Gamble S'Klallam Tribe to promote the health, safety, culture, and general welfare of the Tribal Community and to recognize that individuals who attempt suicide are in need of assistance and care. These individuals are entitled to the opportunity to heal in the least restrictive and most culturally relevant environment possible.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.02 Purpose

The purpose of this chapter is to:

- a) Secure each person who attempts suicide or who self-harms such care and treatment as will be suited to the needs of the person. The Tribe intends to secure and ensure that care and treatment is skillfully and humanely administered with full respect for the person's dignity and personal cultural integrity;
- b) Accomplish suitable care and treatment whenever possible in a community-based setting;
- c) Accomplish suitable care and treatment in an institutionalized setting, only when less restrictive alternatives are unavailable or inadequate and only when a person requires institutionalized care; and
- d) Assure that due process of law is accorded any person coming under the provisions of this chapter.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.03 Definitions

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

- a) Applicant: A person who makes an application for the admission of another into a treatment facility.
- b) Attempted suicide: Any person who willfully attempts to cause his or her own death.
- c) Court: The PGST Tribal Court.

- d) Director: The administrator or other administrative officer of a treatment facility.
- e) Emergency Situation: A situation in which any person is in imminent danger of death or serious bodily harm from the attempt to commit suicide.
- f) Next of kin: Any immediate family member including mother, father, sisters, brothers, grandparents, and adult children. Other family members may be considered as next of kin if the individual has a close familial bond with them.
- g) Patient: Any person who is under observation, care, or treatment in a treatment facility.
- h) Professional person: A person who is a licensed medical doctor with Board Certification in Psychiatry or a person with a doctoral degree in Clinical Psychology or a person who meets criteria established by the Tribal Mental Health Department for certification as a Mental Health Professional in accordance with Tribally-approved Mental Health policies.
- i) Reasonable medical certainty: Reasonable certainty as judged by the standards of a professional person.
- j) Reporter: A person who reports another person as a suicide risk to the Tribal Police Department.
- k) Respondent: A person who has been recommended by formal report under this chapter for treatment.
- l) Self-harm / Non-suicidal self-injury: The direct or deliberate infliction of serious harm to oneself, for purposes not socially sanctioned, without the conscious intent to die.
- m) Suicide intervention protective services / suicide intervention treatment: Services intended to provide treatment for a person, either with or without the person's consent, who is in imminent danger of death or serious bodily harm from the attempt to commit suicide.
- n) Treatment facility: Any center or facility that is equipped and staffed to provide treatment for persons who attempt to commit suicide or who self-harm, whether on or off the reservation.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.04 Reporting

The care of our community members at risk of suicide is a family and a tribal responsibility. Any member of the Port Gamble S'Klallam Tribe and persons residing within the jurisdiction of the Tribe who have reason to believe that a person subject to the jurisdiction of the Tribe is in need of suicide intervention protective services may report such information to the Tribe's Police Department.

Reporting under this section is mandatory for tribal employees and contractors with the Tribe who perform services to the community in the areas of education, health and human services, and law enforcement.

A law enforcement officer receiving such a report shall promptly investigate the person alleged to be in need of suicide intervention protective services. Tribal law enforcement shall forward all reports received, along with any investigation findings, to the Children and Family Services Behavioral Health Division Director.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.05 Contents of the Report

A person making a report must provide his or her name to the Tribal Police. The identity and personal information of a person making a report is confidential unless there is a judicial proceeding that requires the information or the person consents. Reports under this section shall contain the following information if known:

- a) The name, address, and telephone number of the person at risk of suicide, the reporter, and if known, the closest relative of the person at risk of suicide;
- b) The reason(s) why the reporter believes the respondent is in need of suicide intervention protective services;
- c) Any available supporting evidence, including affidavits or written statements from physicians, mental health professionals, other appropriate professionals, or members of the community concerning the respondent; and
- d) Any other helpful information.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.06 Immunity

All persons who report or testify about a person in need of suicide intervention protective services are immune from civil liability and

criminal prosecution. Conduct complying with the reporting and testifying provisions shall not be deemed a violation of any confidential communication privilege.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.07 Sanctions

Any person who is required to report a person at risk of suicide under Section 16.09.04 of this code and who knowingly fails to report is subject to a civil fine not to exceed \$5,000.00.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.08 Penalty for Submitting a False Report

Any person acting in good faith upon either actual knowledge or reliable information who submits a report under Section 16.09.04 shall not be subject to civil or criminal liability for such act. Any person who knowingly submits a false report under 16.09.04 alleging that another person is in need of suicide intervention protective services shall be guilty of a misdemeanor 1.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.09 Voluntary Admission

Any person may apply for voluntary admission to any public or private hospital or other facility or program for treatment of attempted suicide or for self-harm injuries in accordance with the regulations of such facilities. Any person admitted for voluntary in-patient or similar custodial treatment in such facility shall be entitled to be unconditionally discharged from the facility within forty-eight (48) hours after delivery of a written request made to any official of such facility, unless an application for involuntary admission is filed under the provisions of this code within a forty-eight (48) hour period. Unless the voluntarily admitted person becomes the subject of an application for involuntary admission, such person shall not be subject to the provisions of involuntary admission in this chapter.

In order to streamline the process of voluntary admission to a community hospital for members of the PGST, the Tribal Mental Health Professionals (“MHPs”) have the authority to authorize inpatient hospitalizations for adults. MHPs will exhaust all possibilities for diversion from hospitalizations prior to considering an authorization.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.10 Construction – Involuntary Admission

The involuntary admission section of this chapter shall be construed to provide the least restrictive treatment or detention available that will serve the needs of individuals who attempt suicide and who are involuntarily admitted for recovery and rehabilitation while protecting the safety of the persons to be treated and members of the community.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.11 Application for Involuntary Admission

A PGST MHP or any other professional person, including the Director of any treatment facility, may submit to the Court an application to have any person subject to jurisdiction of the Court involuntarily admitted to a treatment facility for treatment of attempted or threatened suicide. A person who self-harms or inflicts non-suicidal self-injury is not subject to an application for involuntary admission. Such application shall include:

- a) The name, address, and telephone number of the person at risk of suicide (the respondent), the person submitting the application, and if known, the closest relative of the person at risk;
- b) The reason(s) why the respondent is in need of suicide intervention protective services;
- c) Any available supporting evidence, including affidavits or written statements from physicians, mental health professionals, other appropriate professionals, or members of the community concerning the respondent;
- d) An explanation why reporting the respondent is in the respondent's best interest to avoid suicide; and
- e) Any other helpful information.

If a person who is not a professional person believes that an individual who attempted suicide should be involuntarily admitted, that person may request that a MHP at the PGST Wellness Center initiate an investigation. A MHP shall contact and assess the individual and report the findings to the Mental Health Clinical Supervisor at the Wellness Center. If the Supervisor finds sufficient reason to involuntarily admit the individual, the Supervisor shall file an application for involuntary admission with the Tribal Prosecutor and notify the Children and Family Services Behavioral Health Division Director. The Tribal Prosecutor shall approve an application upon a finding of probable cause based on medical evidence.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.12 Review of Application for Involuntary Admission

The Tribal Prosecutor shall review an application for involuntary admission immediately before it is filed. If the Prosecutor finds that the application is insufficient to support a finding of probable cause that the respondent is in need of involuntary admission, the Prosecutor shall not accept the application for filing.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.13 Emergency Detention

The following standards shall apply for emergency detention situations:

- a) When an emergency situation exists, a Tribal law enforcement officer may take any person, subject to the jurisdiction of the Court, who appears to be in need of suicide intervention protective services into custody only for sufficient time, but not to exceed the next regular business day, to contact the PGST Clinical Supervisor of the Wellness Center or other appropriate professional person for emergency evaluation. If practical, law enforcement shall first contact the Supervisor or the professional person prior to taking the person into custody.
- b) If the Supervisor or other professional person believes that an emergency situation exists and that the person held in custody is at serious risk of suicide, then the person at risk may be detained for up to seventy two (72) hours. At that time, the Supervisor or other professional person shall release the detained person or file an application with the Tribal Prosecutor for involuntary admission under 16.09.11. In either case, the Supervisor or professional person shall file a report to the Court explaining his or her actions.
- c) Where possible a person at risk of suicide or who attempts suicide shall be taken to a treatment facility on the Reservation. Where no on-Reservation treatment facility or health care facility can provide the emergency treatment or protection needed to protect the patient from imminent harm, a law enforcement officer or professional person may place the patient in an appropriate treatment facility off the Reservation.
- d) A law enforcement officer who takes a person into emergency detention may do so independently of whether a report has been filed. The officer shall immediately make all reasonable efforts to notify the detainee's next of kin. The officer who detains a person under this section shall inform that person that detention is required

in order to protect the person against suicidal self injury and that the Tribal Police have the authority to hold the person until a professional person assesses the person's condition.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.14 Detention to be in the Least Restrictive Environment

A person detained under this chapter shall be held in the least restrictive environment required to protect the life and physical safety of the person detained.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.15 Preliminary Hearing

After receiving an application for involuntary admission, the Court shall immediately schedule a preliminary hearing. The hearing will be held immediately if possible and in all cases at the next Court date after the filing of the application.

A copy of the application and of the notice of the hearing on the application, including the date, time, and place fixed by the Court, shall be personally served on the person whose involuntary admission is sought (respondent) no less than five (5) days prior to the hearing. A copy of the application and of the notice of the hearing, including the date fixed by the Court, shall be served either personally or by any other means allowed under the law on the respondent's next of kin, on a parent or legal guardian if the respondent is a minor, or on any other person the Court believes advisable.

The notice of the hearing shall state that the respondent has a right to the following:

- a) Retain counsel at respondent's own expense, as provided in Chapter 1.05 of this code;
- b) Be present at the hearing;
- c) Testify, present documentary evidence, call witnesses, and ask questions of all witnesses.

There is no right to a jury trial at a preliminary involuntary admission hearing.

The Court shall conduct the preliminary hearing informally and shall close it to the public unless the respondent or authorized representative

requests otherwise and the Court so orders. Where necessary, the hearing may be held where the respondent is detained.

The Judge shall appoint a professional person to the respondent and shall fix a date for a final hearing on the application at the next court date. The desires of the respondent shall be taken into consideration in the appointment of the professional person.

The professional person shall assess the respondent prior to the initial hearing. The Tribe may pay for such an assessment if the respondent is a tribal member or a non-Indian community member. The appointed professional person shall be present for the initial hearing and provide testimony before the Court.

If the Court finds at the preliminary hearing that the respondent is not suicidal or did not attempt suicide and does not require involuntary admission to a treatment facility it shall dismiss the application and order the respondent released.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.16 Detention Pending Hearing or Trial – Jail Prohibited

Detention by jail of a respondent is prohibited unless detention is necessary for a reason other than the respondent's risk of suicidal self-injury. If circumstances warrant detention of a respondent, the respondent shall be informed of his or her rights and the following prerequisites shall be met:

- a) The Court may only order detention of a respondent upon the Tribal Prosecutor's request pending a preliminary or a final hearing and only on a showing of probable cause for the detention.
- b) In the event of detention, the respondent must be detained in the least restrictive setting necessary to assure the respondent's safety, presence at the hearing, and the safety of others.
- c) If the respondent is detained, a professional person shall continue to evaluate and treat the respondent pending a hearing.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.17 Final Hearing on Application for Involuntary Admission

The Court shall ensure that the respondent is served with prior written notice of the date, time, and place of the final hearing no less than five (5)

days prior to the hearing. Proper service is defined by the Service of Notice requirements under Section 3.02.04 of this code.

The standard of proof in any hearing held under this chapter is proof beyond a reasonable doubt with respect to any physical facts of evidence and clear and convincing evidence as to all other matters, except that suicidal intent shall be evidenced to a reasonable medical certainty. Overt acts of imminent threat of self-inflicted injury that are sufficiently recent in time as to be material and relevant to the respondent's present condition shall be included in the medical assessment.

The professional person who submitted the application for involuntary admission must be present for the hearing and is subject to cross-examination. The hearing shall be governed by the Tribal Court Rules of Civil Procedure. The written report of the professional person may be attached to the application, but it must be verified by the professional person at the hearing before formal admission into evidence.

The professional person may testify as to the ultimate issue of whether respondent is in need of suicide intervention treatment that the respondent does not consent to. This testimony is insufficient unless accompanied by evidence from the professional person or others that:

- a) The respondent has attempted or threatened suicide, or inflicted self-injury with the intent to die.

If at the final hearing the Court determines that the respondent is not suicidal or did not attempt suicide and does not require involuntary admission to a treatment facility, the respondent shall be discharged and the application dismissed.

If the Court determines that the respondent did attempt suicide or is suicidal and is in need of treatment based on involuntary admission, the Court shall:

- a) Order outpatient therapy; or
- b) Order the respondent to be placed in the care and custody of a relative, guardian, or other appropriate place other than a treatment facility;
or
- c) Commit the respondent to an appropriate treatment facility for a period of not more than three (3) months or for a length of time determined by the professional person's assessment or treatment plan; or

d) Make some other appropriate order for treatment.

In determining which of the above alternatives to order, the Court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.

If it is determined that the respondent attempted suicide or is suicidal but is not in need of treatment based on involuntary admission, the Court shall:

- a) Order outpatient therapy for a length of time determined by the professional person's assessment; or
- b) Order the respondent be placed in the care or custody of a relative, guardian, or other appropriate person or facility for a length of time determined by the professional person's assessment; or
- c) Make some other appropriate order for treatment other than involuntary admission.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.18 Lack of Available Treatment Facility

Where there is no appropriate treatment facility available for a person who has been ordered involuntarily admitted, the order of admission shall remain in effect while an appropriate facility is sought. When a facility becomes available, the Court shall order an appropriate treatment personnel or law enforcement officer to transport the respondent to the facility. If a facility does not become available within a reasonable time, the Court may hold a review hearing where the professional person shall give an updated treatment recommendation.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.19 Appeal Procedure

A respondent may have appellate review of any order of short-term evaluation and treatment or long-term involuntary admission by appealing to an Appellate Court under Title 7 of this code.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.20 Establishment of Patient Treatment Plan and Patient Rights

An individualized treatment plan shall be developed for all persons ordered to treatment.

Where possible, the Mental Health staff at the Wellness Center shall develop an individualized treatment plan for any person ordered to treatment under Section 16.09.17.

Where Mental Health staff at the Wellness Center cannot develop a treatment plan, an appropriate professional person(s) shall develop a plan no later than ten (10) business days after a person's admission. Each individualized treatment plan shall contain:

- a) A statement of the specific needs of the patient;
- b) A statement of the least restrictive treatment conditions necessary to achieve the purpose of involuntary admission;
- c) A description of treatment goals, with a projected timetable for their attainment;
- d) A specification of staff responsibility and a description of proposed staff involvement with the patient in order to attain the treatment goals; and
- e) Criteria for release to less restrictive treatment conditions and criteria for discharge.

A copy of the treatment plan shall be completed, filed with the Court for review and for inclusion in the patient's Court file, and personally served to the patient, or a parent or legal guardian if the respondent is a minor, within five (5) business days after involuntary admission to a facility.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.21 Examination Following Involuntary Admission

No later than thirty (30) days after a patient is involuntarily admitted to a mental health treatment facility, a professional person shall re-examine the patient and shall determine whether continued detention in the facility is required and whether the treatment facility has implemented the treatment plan developed for the patient. If the patient no longer requires detention in accordance with the facility's standards of detention, the patient must be immediately released unless he or she agrees to continue with treatment on a voluntary basis.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.22 Continued Jurisdiction of Tribal Court – Reports to Court

Under jurisdiction of the Court, the patient's detention may continue only if the patient receives regular care and treatment appropriate for her or his condition. The director or other representative of the treatment facility shall supervise the preparation and implementation of the patient's treatment plan, record the patient's progress under the plan, and report such progress to the Court.

The treatment facility shall file a progress report with the Court and shall serve a copy of the report to the patient no less frequently than every ninety (90) days and at least once during the period of detention. The Court shall have the discretion to fix the frequency of progress reports. The progress reports shall outline the treatment being administered, the patient's progress toward recovery, and the director's recommendation as to the need for continued detention.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.23 Petition for Release

The patient or the patient's assigned professional person may at any time petition the Court for release from the treatment facility. The petition must be in writing, but it does not need to be in any particular form. Grounds for release include the improved health of the patient such that continued detention is no longer necessary under the standards of this chapter. Upon receipt of a petition for release, the Court shall review the petition and serve a copy upon the patient and the director. The director shall respond to the petition within seven (7) calendar days. If, after consideration of the petition and the director's response, the Court finds substantial evidence that the patient may no longer be detained, the Court shall order and hold a hearing on the matter, following the procedures set forth in this chapter. The patient shall be present at the hearing.

Where the Court finds the patient is still in need of treatment but that outpatient treatment would enable the patient to function without danger to self or others, the Court may order the patient released subject to receipt of outpatient treatment. If the professional person providing outpatient treatment reports to the Court that the patient is no longer accepting treatment, the Court shall order the person immediately re-detained to an inpatient facility.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.24 Release by Treatment Facility

The director of the treatment facility where the patient is detained shall notify the Court at least seven (7) calendar days in advance of the planned release of the patient. The Court may conduct a hearing to determine whether the patient is still in need of detention in a treatment facility. If

the Court determines that the patient should remain detained, the patient shall not be released from the treatment center.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.25 Care and Treatment Following Release

The Port Gamble S'Klallam Tribe may provide adequate transitional treatment and care for a patient released after a period of detention for mental health treatment. Transitional care and treatment possibilities include but are not limited to psychiatric care, treatment by a therapist either in a clinic or in the patient's home, a nursing or extended care home, a half-way house, outpatient treatment, or treatment in the psychiatric ward of a general hospital.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.26 Annual Review

Whether the patient has filed a petition for release, the Court shall hold a hearing not less than once each year, following the procedures of this chapter, to determine if the basis for the original detention still exists. If the Court finds that there is no longer clear and convincing evidence that the patient should be detained, the Court shall order the patient immediately released.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.27 Confidentiality of Records

All records and proceedings under this chapter shall be confidential and privileged information, except as may be provided otherwise by law. The captions and text of documents filed with the Court under this Chapter shall refer to the respondent patient by abbreviations of his or her full name.

Records under this chapter shall be accessible to the respondent, the respondent's counsel, the respondent's parent(s)/guardian(s), the Court, persons authorized by an order of the Judge, or persons authorized by written permission of the respondent. Upon application by the Prosecutor or by the director of the facility where the respondent is in detention and upon showing of good cause, the Court may order that the records shall not be made available to the patient if, in the judgment of the Court, the availability of such records to the respondent will adversely affect the respondent's mental state and/or treatment plan.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.28 Mandatory Court Appearance – Notice to Appear

Where tribal law enforcement officers are notified of a suicide attempt and no one has filed a report that the person is in need of suicide intervention protective services, law enforcement shall promptly investigate the incident. Based on the investigation, law enforcement shall either submit a report to the Court that the person is in need of suicide intervention protective services under Section 16.09.04, or law enforcement shall issue the person a notice to contact the PGST Wellness Center or other professional person for a mental health assessment. Law enforcement shall promptly forward the report of such notice to the PGST Wellness Center.

Where tribal law enforcement issues three (3) notices to complete a mental health assessment to the same person within a six (6) month period, an officer shall issue the person a notice to appear in Court along with the third notice to complete a mental health assessment with the PGST Wellness Center or other professional person. The officer shall forward a copy of the notice to appear in Court, along with any investigation findings, to the Children and Family Services Behavioral Health Division Director.

Under Section 16.09.11, where a professional person investigates and determines that the person who attempted suicide should not be involuntarily admitted, the professional person shall conduct a mental health assessment and then issue the person a notice to appear in Court.

The notice to appear in Court shall inform the person that the Court requires the person to complete a mental health assessment with a professional person prior to appearing in Court.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.29 Assessment

Where a person has been given notice to attain a mental health assessment with a professional person, the professional person shall examine and assess the person prior to the Court date in order to report to the Court on the person's mental condition and to recommend a treatment plan. The professional person(s) shall be present for the hearing and provide testimony before the Court.

If an assessment cannot be conducted by reason of the respondent's unwillingness to participate, the professional person shall file a statement with the Court that includes an opinion, if possible, as to whether the respondent's unwillingness was the result of mental illness or deficiency.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.30 Hearing – Civil Nature

The Court shall conduct hearings under Section 16.09.31 as civil matters.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.31 Hearing

When a person has attempted suicide or has inflicted a non-suicidal self-injury and has been issued a notice to appear in Court, the Court shall schedule a hearing on the next court date after the notice was issued. A copy of the notice to appear and of the notice of the hearing, including the date, time, and place fixed by the Court, shall be personally served on the respondent no less than five (5) days prior to the hearing. Proper service is defined by the Service of Notice requirements under Section 3.02.04 of this code.

The hearing shall be conducted informally and shall be closed to the public unless the respondent requests otherwise and the Court so orders. The Judge shall appoint a professional person to the respondent. The desires of the respondent shall be taken into consideration in the appointment of the professional person.

The professional person who conducted the assessment must be present for the hearing and shall testify as to the ultimate issue of whether the respondent is in need of suicide intervention treatment. If the professional person finds that the respondent is in need of suicide intervention treatment, the respondent may voluntarily enter into treatment under 16.09.09 or the professional person may file an application for involuntary admission under 16.09.11.

If the respondent is not in need of suicide intervention treatment, the Court shall order mandatory counseling. The nature, form, and duration of the counseling shall be within the Court's discretion, to be determined in accordance with the circumstances of each case.

Where the Court orders the respondent to attend mandatory counseling, the professional person or service providers who provide the court-ordered counseling to the respondent shall give compliance reports to the Court. The Court shall determine the frequency of reports, but the professional person must file at least two (2) compliance reports in a year. The Court may order the providers to report directly to the Court.

If the Court finds at the hearing that the respondent is not suicidal or did not attempt suicide and does not require suicide intervention treatment or mental health counseling, the respondent shall be discharged and the case dismissed.

In determining which of the above alternatives to order, the Court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.32 Additional Hearing Necessary

If the respondent has not completed a mental health assessment with a professional person prior to the hearing, the Judge shall order the respondent to complete a mental health assessment with the appointed professional person and shall schedule a final hearing on the next court date.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.33 Final Hearing

Where the respondent has not completed a mental health assessment with a professional person prior to the hearing, the Court shall schedule a final hearing on the next court date after the respondent completes an assessment.

The final hearing shall be conducted in the same manner as a hearing under 16.09.31.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.34 Community Service

The care of PGST community members at risk of suicide is a family and a tribal responsibility. If a respondent is unwilling to attend mandated counseling sessions, the Court may, at its discretion, order community service in addition to or in lieu of counseling. Examples of community service may include, but are not limited to, clean up of tribal lands, providing food and services to membership during events, cutting wood or providing other services for elders, or other culturally appropriate activities that benefit the tribe. The Court shall determine if the respondent is a suitable candidate for community service and if the respondent is likely to carry out the service faithfully.

If a respondent is unwilling to attend mandated counseling sessions, the Court may, at its discretion, order alternative treatment options in addition to or in lieu of counseling or community service. Alternative treatment options should promote the healing and general welfare of the respondent. In assigning alternative treatment options, the Court shall take the desires of the respondent into consideration.

Completion of community service or of alternative treatment option(s) may qualify as completion of Court requirements.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.35 Contempt

Any willful disobedience or interference with any lawful order or process of the Court shall constitute contempt under Chapter 1.06 of this code. The Court must exhaust every option before it may punish a respondent for contempt in accordance with the law and order code.

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

16.09.36 Severability

Should any court of competent jurisdiction declare any word, section, clause, paragraph, sentence, or part of this code invalid, such decision shall not affect the validity of any other part of this code that can be given effect without the invalid part(s).

[HIST: Resolution No. 14 A 047, passed 3/25/14.]

APPENDIX A

PREDICTING PARENTING CAPACITY

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

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

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

1. Evidence of widespread disturbances in physical, cognitive, language, academic, emotional, or social development.
2. Problems in development and adjustment have been present for years.
3. The parent suffers from a psychiatric illness which significantly affects his or her parental ability and which has associated with it a poor prognosis.
4. Past attempts to provide help have consistently failed. Parent lacks cooperation and openness, and resists involvement in the therapeutic process.

5. Parent cannot accept even partial responsibility for the genesis and maintenance of the problem, or for his or her failure to benefit from past treatment.
6. The family is isolated from and unable to accept help or emotional support from friends, neighbors, extended family, or mental health professionals.

[HIST: Resolution No. 90 A 35, passed 5/8/90]