

FAMILY CODE

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TITLE 21 FAMILY CODE

Chapter 21.01 General Provisions

21.01.01 Policy

Port Gamble S'Klallam parents have a responsibility for caring for their children, bonding with them, making sure they are safe, and providing for all their basic needs. Aunts, uncles, grandparents and other extended family members help parents and their children when they need help by advising the parents in decision-making, showing love to the children, teaching values and respect, and taking over in parents' absence. Grandparents share with their grandchildren the wisdom of their experience and traditional values.

The Port Gamble S'Klallam Community Court is the most appropriate forum for deciding issues related to the well-being of a child who is a member of a Port Gamble S'Klallam family.

It is the policy of the Port Gamble S'Klallam Tribe to consider carefully the circumstances of each family and to treat each family individually.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.01.02 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) Adult: Any person who is either eighteen (18) years of age or older, married, or emancipated.
- b) Alleged father: Any man who might be the biological father of a child, including men who are "presumed fathers" under section 21.02.14.
- c) Child: A natural child or an adopted child, except that under chapter 21.02, Paternity, "child" refers only to a natural child.
- d) Child Support Obligation means the total dollar amount of child support, including payment of work-related day care expenses and the child's share of health insurance, that the paying party is obliged to pay to meet his or her current financial duty to support his or her child. It also includes any non-cash services or resources the party is required to provide.

- e) Child Support Program refers to the Port Gamble S’Klallam Child Support Program.
- f) Domicile: Domicile means permanent home. “Home” is the location where a person has family, community, cultural, ancestral and historical ties and the place to which the person intends to return. The domicile or permanent home of a Port Gamble S’Klallam tribal member is presumed to be the Port Gamble S’Klallam Reservation. A tribal member may be living off the reservation for purposes of work, school, military service or for other reasons but the member’s “home” is the Port Gamble S’Klallam Reservation. The domicile of a child who is a member of or eligible for membership in the Port Gamble S’Klallam Tribe is presumed to be the same as the parent who is the Port Gamble S’Klallam member.
- g) 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.
- h) Indian Tribe: Any tribe, band, nation, or group of Indians recognized by the Secretary of Interior as eligible for services provided to Indians; any treat tribe, metis community, or nonstatus Indian from Canada; and any tribe recognized as such by the Port Gamble S’Klallam Tribe, regardless of federal recognition status.
- i) Parent: This term includes 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.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.01.03 Port Gamble S’Klallam Enrollment Office – Relationship with Port Gamble S’Klallam Community Court

Enrollment of all children eligible for membership in the Port Gamble S’Klallam Tribe is essential to the survival of the Tribe, the furtherance of tribal sovereignty, and the rights of future generations of potentially

eligible children. In order to encourage acknowledgments of paternity for enrollment purposes, all enrollment records, including birth certificates, are confidential and are not subject to subpoena by any court. This code vests no jurisdiction in the Court over tribal enrollment.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.01.04 Basis for Personal Jurisdiction over Nonresidents

The Port Gamble S'Klallam Community Court is vested with the fullest jurisdiction permissible under applicable law. With respect to personal jurisdiction over nonresidents this includes, but is not limited to, people who:

- a) Are members of the Port Gamble S'Klallam Tribe;
- b) Are personally served with a summons on the reservation;
- c) Consent to the jurisdiction of the Court; [by entering a general appearance or filing a responsive document] [by participating in the proceeding unless participation is for the purpose of contesting jurisdiction]
- d) Resided on the reservation with a child who is the subject of the proceeding;
- e) Engaged in sexual intercourse on the reservation during which a child who is the subject of the proceeding may have been conceived; or
- f) Had a duty to, and failed to, support a child who:
 - i) Resides on the reservation; or
 - ii) Is a member of a Port Gamble S'Klallam family; or
 - iii) Received TANF assistance from the Port Gamble S'Klallam Tribe.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.01.05 Continuing Exclusive Jurisdiction

In every action under this title, the Court shall retain continuing, exclusive jurisdiction over the child to the fullest extent permitted by law.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.01.06 Civil Procedure Laws Apply

Proceedings under this Title are civil actions and are governed by applicable provisions of Titles 1 and 3 of the Port Gamble S'Klallam Law and Order Code, except where this title provides otherwise.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.01.07 No Right to a Jury

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

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.01.08 Right to Spokesperson

Any person appearing in the Port Gamble S'Klallam Community Court shall have the right to a spokesperson at his own expense, as provided in chapter 1.05.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.01.09 Filing Fee

A filing fee of \$25 shall be submitted with a petition.

When one case involves proceedings under more than one chapter of this title, there shall be only one filing fee.

The filing fee may be waived by the Court, in its discretion, upon good cause shown.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.01.10 Petition and Joint Petition

Petitions shall be prepared on forms approved by the Court Administrator.

The parties may both sign a petition and by doing so, waive the requirements of service of a summons.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.01.11 Service of Summons

After a petition is filed, the petitioner shall cause the respondent to be served with a copy of the petition and a summons on a form approved by the Court Administrator

- a) Personal Service. Personal service may be effected by personally delivering a copy of the summons and complaint to a person of suitable age and discretion at the residence of the person to be served, with directions to deliver it to the person to be served. Service must be made by a person over the age of eighteen (18) years, who is not a party to the action, nor a member of a party's immediate family.
- b) Service By Mail. If the person cannot be found within the boundaries of the Port Gamble S'Klallam Reservation service may be accomplished by certified mail, return receipt requested.
- c) Service by Publication. When the respondent cannot be found within the Reservation and attempts to serve the respondent by certified mail have failed, the petitioner may ask the judicial officer or judge to allow service by publication. If the request is granted, the petitioner shall:
 - i) Post copies of the summons and petition in two (2) public places on the Reservation for three (3) weeks; and
 - ii) Publish the summons once a week for three (3) consecutive weeks in a newspaper of general circulation in Kitsap County.

If service by publication is permitted, the Court shall establish longer time deadlines for default orders and for hearings in order to provide for fair notice and opportunity for the respondent to respond.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.01.12 Summons – Content

The summons shall notify the respondent that if he does not appear or respond to the petition within twenty (20) days from the date of service (or within 60 days of the date of publication if service is by publication) the Court may proceed without the respondent.

The summons shall contain notice of the date of the hearing.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.01.13 Summons – Proof of Service

The person serving the summons and petition shall file with the Court certification that he has served the respondent, including the date and place of service. If service was made on a person other than the respondent, the certification shall state the name of the person served, the date and place of service, and the instructions given.

In case of service by certified mail, the return receipt shall be filed with the Court and shall constitute the proof of service. In case of service by publication, an affidavit by the publisher and a copy of the summons as published shall constitute the proof of service.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.01.14 Setting the Initial Hearing

When the Court receives a petition, it shall set a hearing date which shall not be more than thirty five (35) calendar days after the petition was received, unless otherwise provided in this title or unless continued for good cause.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.01.15 Response

Except for joint petitions, within twenty (20) calendar days after the respondent is served with a copy of the petition [or within sixty (60) days if service was by publication], the respondent shall either:

- a) File a written response or contact the Court Administrator and state whether he or she will appear in court to respond to the petition; or
- b) File his or her own petition on a form approved by the Court Administrator.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.01.16 Notice of Hearings – Timing

The Court Administrator shall issue notices of hearings to all parties.

- a) Initial Hearing: Notice shall be given at least twenty (20) calendar days before the hearing. This notice shall be contained in the summons and served with the petition;
- b) Hearings for Temporary Orders: Notice shall be given at least five (5) calendar days before the hearing or such time as the Court feels is necessary to respond to the motion;
- c) Hearings for Emergency Restraining Orders: No notice is required before a hearing for emergency restraining orders under this code.
- d) Other Hearings: Notice shall be given at least twenty (20) calendar days before the hearing, except that the Court may shorten the time for responding if justice so requires.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.01.17 Service of Documents Other than Summons and Petition

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 in the same manner provided in section 21.01.11 for service of the petition and summons;
- b) Certified mail with return receipt requested and by regular mail; or
- c) Any other method approved by the Court.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.01.18 Evidence and Burden of Proof

Unless additional rules are stated in each chapter, rules of evidence and burden of proof shall be the same as those which apply to civil actions before the Port Gamble S'Klallam Community Court.

[Cross reference: 3.06.04 Evidence; 3.06.03 Standard of Proof.]

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.01.19 Recognition and Enforcement of Other Courts' Orders

The Court may give recognition to the court or administrative orders, judgments or decrees of other Indian nations and tribes, states or federal agencies as a matter of comity (courtesy).

Certified foreign orders may be given recognition provided that:

- a) The order does not violate the Indian Child Welfare Act;
- b) The court granting the order had jurisdiction over the case and the parties;
- c) The parties were afforded due process of law; and
- d) The order does not violate the public policy of the Port Gamble S'Klallam Tribe.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.01.20 Transfer of Jurisdiction – Authority of Court

The Court has the authority to accept transfers of jurisdiction from other courts or governments for proceedings under this title.

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 determined in a hearing.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

Chapter 21.02 Paternity

21.02.01 Purpose

This chapter provides a process for the Court to establish the paternity of a child.

In the Port Gamble S’Klallam Tribe, fathers are important role models who teach respect, values and responsibilities to their children. They care for their children, show them love and point them in the right direction. They support their children in having a safe, secure, healthy, spiritual, happy home life as well as supporting them financially.

The Port Gamble S’Klallam Tribe recognizes that determining biological paternity is important for purposes of tribal membership and the benefits associated with it. This chapter is not intended to take the place of or interfere with confidential acknowledgments of paternity through the Port Gamble S’Klallam Tribe’s Enrollment Office.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.02.02 Recognition of Foreign Paternity Orders and Affidavits

Recognition of Court Ordered Paternity. A court order from another jurisdiction which established paternity will only be recognized by the Port Gamble S’Klallam Community Court if it meets the requirements of section 21.01.19. Paternity orders entered by default violate the public policy of the Port Gamble S’Klallam Tribe.

Recognition of Foreign Paternity Affidavits. The Court may grant recognition to a state affidavit of paternity unless:

- a) It was signed by a minor who did not understand the consequences of signing the affidavit; or
- b) There is evidence of duress, mistake, or unfair procedure.

Filing for Paternity with Existing Order or Affidavit. A petition for establishment of paternity may be filed in the Port Gamble S’Klallam Community Court even if a state paternity affidavit has been signed or an order regarding paternity has been issued by another court when the petitioner believes that the other process was unfair.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.02.03 Paternity Petition – Generally

A paternity proceeding under this chapter may stand alone as a separate proceeding or it may be joined with an action to determine child support at the request of the alleged father or the child’s mother.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.02.04 Petition – To Determine Mother-Child Relationship

The provisions of this chapter may be applied, as far as practicable, to the determination of the existence or nonexistence of a mother and child relationship.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.02.05 Paternity Petition -- Who May File

A petition requesting the Court to establish paternity may be filed by:

- a) A child (including an adult “child”), or, if the child is under 18, the child’s legal guardian, if authorized by the Court under 16.03.13;
- b) The child’s natural mother;
- c) An alleged father of the child; or
- d) The Port Gamble S’Klallam Enrollment Committee, when it has reason to believe that the child’s birth certificate or affidavit of paternity are irregular or unreliable.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.02.06 Paternity Petition -- Contents

A petition to establish paternity, prepared on a form approved by the Court Administrator, shall state:

- a) The names, ages, addresses, and tribal affiliations, if any, of the natural mother, the alleged father(s), the child, all others who have legal rights of custody, visitation or support of the child, and of the petitioner;
- b) Whether the natural mother and the alleged father are or were married, and the dates of marriage, separation and divorce, if any;

- c) Whether the natural mother and alleged father agree that the alleged father is the natural father of the child;
- d) Whether there have been any other court or administrative paternity proceedings or state paternity affidavits concerning the child, and whether there have been any termination of parental rights or adoption proceedings;
- e) A certified copy of the child's birth certificate shall be attached to the petition or provided to the Court at least ten (10) days before the first hearing; and
- f) Whether a name change for the child is requested.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.02.07 Service of Paternity Summons and Notice of Hearing – Notice to ICW

The natural mother, the child's legal guardian, the adult child, and each man alleged to be the natural father shall be served with a summons and the petition, as provided in section 21.01.11, notified of all hearings, as provided in section 21.01.16 and given an opportunity to be heard.

In every case in which the natural mother or an alleged father is a minor, the Court shall notify the Port Gamble S'Klallam Indian Child Welfare Program. The Indian Child Welfare worker may appear in court and communicate with the Court and the Port Gamble Child Support Program regarding protection of the minor.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.02.08 Absent Parties

The Court has jurisdiction to decide the issues before it whether or not all the alleged fathers participate in the hearing.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.02.09 Paternity Hearing -- Conduct

The following rules apply to paternity hearings:

- a) All paternity hearings shall be closed unless all parties agree otherwise.

- b) The mother of the child and the alleged father(s) may be compelled to testify at the paternity hearing.
- c) Testimony of a health care provider concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged for purposes of admitting this evidence at the paternity hearing.
- d) If the Petition contains a request that the child's name be changed, the Court shall hear testimony on this issue.
- e) The parties shall provide testimony on how the costs of paternity testing shall be paid. If the testing was paid by the Port Gamble S'Klallam Tribe, the Tribe may waive all or part of the costs or request reimbursement.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.02.10 Genetic Tests

The Court may, and at the request of a party shall, require the child, mother and alleged father(s) to submit to genetic tests. An alleged father may be excused from the requirement of genetic tests if the Court determines that there is no reasonable possibility that sexual contact occurred at or near the time of conception. Exceptions to this section are also contained in section 21.02.11 "Good Cause Not to Reveal Father's Identity," and 21.02.23 "Disestablishment of Paternity."

The following requirements apply to genetic testing under this section:

- a) Lab Accredited. The tests shall be performed by an accredited paternity genetic testing lab that performs legally and medically acceptable tests, approved by the Tribe or the Court.
- b) Common Ancestor. The mother shall notify the genetic testing laboratory if she and any of the alleged fathers have a common ancestor or if there is another possible father who is closely related to the alleged father.
- c) Filing Test Results with Court. The party receiving the copy of the genetic test results from the expert shall file them with the Court who shall send all parties a copy of the test results by certified mail, return receipt requested.
- d) Admission into Evidence. Unless a party objects to the results of genetic tests in writing at least five (5) days before the hearing, the tests shall be admitted as evidence of paternity without the need for foundation testimony or other proof of authenticity.

- e) Affidavit of Genetic Expert. The results of genetic tests must be accompanied by an affidavit from the expert describing the expert's qualifications and analyzing and interpreting the results as well as documentation of the chain of custody of the genetic samples.
- f) Contempt of Court. Failure to submit to genetic tests when required by the Court may constitute contempt of court as provided in chapter 1.06.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.02.11 Good Cause Not to Reveal Father's Identity

A woman may be excused from submitting to genetic testing or from identifying or locating the father of her child when there is good cause not to reveal his identity or location. The Court may hold a closed, ex-parte hearing to determine whether good cause exists. "Good cause" may include, but is not limited to:

- a) Cases involving domestic violence;
- b) Cases involving incest or rape; or
- c) Cases where identification of the father is not in the best interest of child.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.02.12 Paternity Hearing - Evidence and Burden of Proof

The burden of proof shall be the same as that applied to civil actions before the Port Gamble S'Klallam Community Court.

The Court may consider the following types of evidence in paternity cases:

- a) Genetic test results;
- b) Evidence of sexual intercourse between the mother and an alleged father(s) at any possible time of conception;
- c) An expert's opinion concerning the statistical probability of an alleged father's paternity, based upon the duration of the mother's pregnancy;

- d) Medical or anthropological evidence relating to an alleged father's paternity of the child based on tests which may be ordered by the Court and performed by experts;
- e) Reputation in the community as to paternity; and
- f) Any other reliable evidence which is relevant to the issue of paternity of the child, except that confidential Port Gamble S'Klallam enrollment affidavits of paternity shall only be admissible when offered by the man who signed the affidavit. If the father is deceased, the Enrollment Committee may file a confidential Port Gamble S'Klallam enrollment affidavit of paternity with the Court if the Committee, in its sole discretion, deems it to be in the child's best interest.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.02.13 Paternity Hearing - Presumptions

The following are conclusive presumptions in paternity cases that can be overcome only by clear and convincing evidence:

- a) Genetic testing which establishes a ninety-nine percent (99%) or greater probability of paternity;
- d) A signed birth certificate naming the natural father.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.02.14 Default Paternity Orders

Paternity orders entered by default are against the public policy of the Port Gamble S'Klallam Tribe.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.02.15 Default Paternity Orders – Reimbursement of Child Support Paid Erroneously

When a man has paid child support as the father of a child and the paternity of a different man is established later by the Port Gamble S'Klallam Court based on genetic testing, the Court may order reimbursement of the child support that was paid erroneously only if:

- a) The child support payments were retained by a state or tribal government under a permanent assignment of public assistance benefits;
- b) Notice of the hearing has been served on the appropriate government agency;
- c) The government agency that received and retained the payment is the party ordered to make the reimbursement; and
- d) Reimbursement extends back to the date the man can prove he attempted to contest the child support obligation or eighteen months, whichever is longer.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.02.16 Agreed Paternity Order

The parties may submit an agreed order establishing the paternity of a child. Before deciding whether to approve the agreed order, the judge shall hold an in-chambers, ex-parte discussion individually with each party to:

- a) Explain the proposed agreed order in detail and the consequences of the order and of the person's failure to comply with agreed terms;
- b) Assure that the person's consent to the proposed agreed 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;
- d) Explain the burden of proof as to each issue;
- 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 party wants a friend, family member or other person to be present, the judge shall allow it after first speaking alone with the party. If the Court finds that any consent was not truly voluntary, the agreed order shall not be entered and the case shall proceed to a hearing.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.02.17 Paternity Proceedings Involving Another Jurisdiction

If the Court cannot obtain personal jurisdiction over the natural mother or an alleged father and finds that it cannot make a determination of paternity without that person, the Court may:

- a) Request the Port Gamble S'Klallam Child Support Program to have another tribe or state require the person to submit to genetic tests performed by an expert in paternity genetic testing; or
- b) Request a tribunal of another tribe or state to require the person to respond to an order by the Port Gamble S'Klallam Community Court the person to submit to genetic tests performed by an expert in paternity genetic testing; or
- c) Forward the case to a tribunal of another tribe or state for the sole purpose of determining paternity.

Exclusive Jurisdiction. The Port Gamble S'Klallam Community Court shall retain exclusive, continuing jurisdiction over the case for custody, visitation, child support and all other issues to the fullest extent permissible under applicable law.

Temporary Orders. Pending determination of the paternity issue, the Court may make a temporary order regarding custody and support of the child.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.02.18 Paternity Order - Final

The decision of the Court shall be final for purposes of appeal under section 7.03.01 of the Port Gamble S'Klallam Law and Order Code.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.02.19 Paternity Order – Effect; Other Orders

The order determining the existence or nonexistence of the parent-child relationship shall be effective for all purposes. The Court shall provide the Port Gamble S'Klallam Enrollment Office with a copy of the paternity order. A paternity order may be accompanied by any order, temporary or final, authorized by Title 21 or Title 16 under the provisions of the applicable chapter.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.02.20 Paternity Order – Name Change, Amended Birth Certificate

The Court may authorize that the child’s name be changed.

If the finding of paternity or the child’s new name varies from the child’s birth certificate, the Court shall order that an amended birth certificate be issued.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.02.21 Paternity Records - Confidentiality

The records filed in a paternity action shall be sealed. Only parties to the case may obtain copies, including the Enrollment Committee.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.02.22 No Statute of Limitations

An action to establish paternity shall not be subject to a statute of limitations.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.02.23 Disestablishment of Paternity

The proceedings in this chapter may be used to disestablish paternity. The limits on who may file an action in section 21.02.05 apply to disestablishment proceedings. However, Port Gamble S’Klallam public policy discourages the disestablishment of paternity. The Court shall require the party challenging a paternity which has been legally acknowledged to show that it is in the best interests of the child to change the status quo, before the Court orders or permits genetic testing; except that if the party challenging a paternity that has been legally acknowledged is the Port Gamble S’Klallam Enrollment Committee, the Enrollment Committee must show it is in the best interest of the Tribe to change the status quo.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

Chapter 21.03 Child Support

21.03.01 Purpose

In the Port Gamble S'Klallam Tribe, children are cared for by parents, extended family and the community. This chapter focuses on parents' financial duty to their children.

The purpose of this chapter is to provide a process that ensures that the basic financial needs of children are met when their parents do not live together.

The Port Gamble S'Klallam Child Support system is a child-centered, agreement-based process. It is the Tribe's policy to promote cooperation and agreement by the parents regarding fulfillment of their duties to their children. It is the experience of the Port Gamble S'Klallam Tribe that a non-custodial parent is more likely to remain connected with his or her children if he or she has developed an agreement with the other parent on the amount of child support.

It is also the policy of the Port Gamble S'Klallam Tribe not to interfere in arrangements agreed upon by families when those agreements serve the best interests of the child.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.02 Duty of Care and Support

Parents have a legal duty to care for and support their natural born and adopted children. This applies to all natural parents whose parental rights have not been terminated and to all adoptive parents. This duty includes providing love, guidance, education, a safe and healthy environment and financial support. Parents also have a duty to ensure that S'Klallam children have an opportunity to learn about and participate in the S'Klallam Way. This includes access to S'Klallam family, participation in S'Klallam events and an opportunity to exercise S'Klallam treaty rights.

Stepparents do not have a legal duty to care for and support step-children but may have a moral and traditional duty to contribute to their support.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation. Amended by Res. No. 22-A-138, passed 8/22/22, to clarify the nature of the parental duty and to whom it applies and to use uniform terms throughout the code.]

21.03.03 Port Gamble S'Klallam Child Support Program

The Port Gamble S'Klallam Child Support Program:

- a) Shall make assistance available to parents in developing agreements for child support and health insurance. Parents may obtain these services before they file a petition or they may be referred by the Court;
- b) Shall prepare a recommendation about the child support and health insurance obligation for each case, using a form developed by the Program. In making its recommendation, the Child Support Program shall be guided by the Port Gamble S'Klallam Child Support Guidelines and Schedule. The Program's recommendation shall be filed with the petition whenever possible; and
- c) May represent the interests of the child in child support enforcement proceedings, as provided in section 21.03.47(a).

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.04 Child Support in Child in Need of Care and Guardianship Cases

This chapter may serve as a guide for establishment of child support in Child in Need of Care and Guardianship cases. In those cases, however, the policies and procedures of Title 16 applicable to Child in Need of Care and Guardianship cases, supercede this chapter to the extent that the two chapters may be inconsistent.

[Cross-Reference: Chapter 16.02, Child in Need of Care; Chapter 16.03 Guardianship.]

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.05 Petition for Child Support – Who May File

- a) A petition asking the Court to establish child support may be filed by:
 - i) The child's parent;
 - ii) The child's legal guardian, if authorized by the Court under 16.03.13; or
 - iii) The Port Gamble S'Klallam Child Support Program if the Program is representing the interests of the child in receiving

child support in a case involving: another tribe or state; the Port Gamble S'Klallam Indian Child Welfare Program; the Port Gamble S'Klallam Temporary Assistance for Needy Families Program; or the Port Gamble S'Klallam Tribal Licensed Care Program. In cases where the Port Gamble Child Support Program is involved in a case under this Section, the Program shall be treated as a party to the proceeding.

- b) The child support petition may be filed as a separate proceeding or in connection with a petition for:
 - i) Divorce or invalidity of marriage under chapter 21.04;
 - ii) Paternity under chapter 21.02; or
 - iii) Child custody under chapter 21.05.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation. Amended by Res. No. 22-A-138, passed 8/22/22, to clarify and expand who has standing to file a child support petitions and to authorize the Child Support Program to represent the interest of the Tribe in child support cases.]

21.03.06 Petition for Child Support - Contents

A petition for establishment of child support shall contain:

- a) The name, address, tribal affiliation, date and place of birth, and social security number of the petitioner, the responding party and the child for whom support is requested;
- b) The child support obligation requested or agreed upon;
- c) The proposed provision of health insurance for the child;
- d) Any proposed work-related day care or extraordinary medical expenses;
- e) The date proposed for the child support obligation to begin and when it is proposed to terminate;
- f) The proposed frequency of payment;
- g) A statement whether child support payments should be made by wage withholding or by direct payment, and to whom payments should be made if not the Port Gamble S'Klallam Child Support Program;

- h) A proposed Parenting Plan, if any, or, if custody is shared, the percentage of a year that each parent has physical custody of the child;
- i) A statement that the petitioner swears that he or she believes that the male party is the father of the child; or a statement that the parties agree that the male party is the father of the child;
- j) A statement whether any of the following proceedings involving the parents or the child are pending or have taken place in any court or administrative agency, and if so, the date, name and place of the Court or agency:
 - i) Child custody proceeding;
 - ii) Child support proceeding;
 - iii) Paternity establishment or disestablishment proceeding;
 - iv) Proceeding requesting a domestic violence protective order or no-contact order; or
 - v) Proceeding requesting a restraining order involving the child or a party.
- k) A statement whether either parent has ever received state or tribal public assistance, and if so, the date(s) and name of the state or tribe providing assistance;
- l) Financial information, as provided in section 21.03.15, if the petitioner is the party that would be obligated to pay child support, if the child is eligible for social security benefits, or if the parties share equal residential time with the child;
- m) Authorization for the release of all financial records to the Port Gamble S'Klallam Court and the Port Gamble S'Klallam Child Support Program;
- n) A statement of which parent should be allowed to claim the child as a dependent for income tax purposes; and
- o) The recommendation of the Port Gamble S'Klallam Child Support Program regarding child support and health insurance coverage.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation. Amended by Res. No. 22-A-138, passed 8/22/22, to eliminate unnecessary paperwork and documentation submission from custodial parent.]

21.03.07 Documents and Notice to Child Support Program

The Court shall provide the Port Gamble S'Klallam Child Support Program with a copy of the petition, response, financial information and all other documents filed in a child support case and it shall provide the Program with notice of all hearings in a child support case.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.08 Setting the Initial Child Support Hearing

When the Court receives a petition, it shall set a hearing date which shall not be more than thirty five (35) calendar days after the petition was received, unless continued for good cause.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.09 Notice of Hearing

The date, time and place of the initial hearing shall be contained in the Summons. Notice of the hearing shall be served on the parties and the Port Gamble S'Klallam Child Support Program.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.10 Service of Child Support Petition and Summons

After a petition is filed, the petitioner shall cause the respondent to be served with a copy of the petition and a summons.

The petition and summons shall be served as provided in section 21.01.10.

The parties may sign a joint petition and by doing so, waive the requirements of service of the petition and summons.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.11 Summons – Content

The summons, prepared on a form approved by the Court Administrator, shall notify the respondent that if he or she does not appear or respond to the petition within twenty (20) days from the date of service or within sixty (60) days of the date of publication, if service is by publication, the

Court may proceed without the respondent and a default judgment may be entered without his or her participation.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.12 Summons – Proof of Service

The person serving the summons and petition shall file with the Court certification that he or she has served the respondent, including the date and place of service. If service was made on a person other than the respondent, the certification shall state the name of the person served, the date and place of service, and the instructions given.

In case of service by certified mail, the return receipt shall be filed with the Court and shall constitute the proof of service. In case of service by publication, an affidavit by the person causing the notice to be published and a copy of the summons as published shall constitute the proof of service.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.13 Response - Financial Information and Parenting Plan

Unless the parties have filed a joint petition, the respondent shall file his or her response within twenty (20) calendar days after the respondent is served with a copy of the petition, or within sixty (60) days if service was by publication. The response shall include financial information as provided in section 21.03.15, if the respondent is the party that would be obligated to pay child support, if the child is eligible for social security benefits, or if the parties share equal residential time with the child. The response also shall include an authorization for the release of all financial records to the Port Gamble S'Klallam Child Support Program and the Port Gamble S'Klallam Court. The respondent may also file a proposed Parenting Plan, as provided in section 21.05.09.

The respondent shall cause the response, including financial information, to be served on the petitioner as provided in section 21.01.10.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation. Amended by Res. No. 22-A-138, passed 8/22/22, to eliminate unnecessary paperwork and documentation submission from custodial parent.]

21.03.14 Response -- Paternity at Issue

If the respondent disagrees or is unsure that he is the father of the child, he shall state this fact in his response.

If the parties do not agree about paternity, either party may request that paternity be established. Upon the request of either party, the Court shall continue the child support proceeding pending establishment of paternity, as provided in chapter 21.02. If the parties do not agree about paternity and neither party requests paternity establishment, the Court shall dismiss the child support petition.

[Cross-Reference: Paternity 21.02.]

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.15 Financial Disclosure

The party obligated to pay child support, or both parties, if they share equal residential time with the child or if the child is eligible for social security benefits, shall provide complete disclosure of financial information, including verification of all income and resources, to the Court or to the Port Gamble S'Klallam Child Support Program.

- a) Procedure for Disclosure. Financial information shall be provided on forms approved by the Court Administrator. It shall be submitted with the petition or response or at least ten (10) days before the hearing.
- b) Penalty. Failure to provide required financial disclosure may be grounds for contempt of court, as provided in chapter 1.06.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation. Amended by Res. No. 22-A-138, passed 8/22/22, to eliminate unnecessary paperwork and documentation submission from custodial parent.]

21.03.16 Financial Disclosure Confidentiality

Financial information filed with the Court or provided to the Port Gamble S'Klallam Child Support Program and information shall be confidential and available only to the parties, the Court and the Port Gamble S'Klallam Child Support Program, and solely for the purpose of establishing paternity, or establishing, modifying, enforcing or distributing child support.

A party is not required to provide his or her financial information as part of the Court record, provided the party has made full and complete financial disclosure to the Port Gamble S'Klallam Child Support Program and the Program has certified that it has reviewed the financial information and its recommendation is based upon that information.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.17 Limited Statutory Waiver of Confidentiality

The following entities are authorized and required to provide information regarding a party's income, resources and address to the Port Gamble S'Klallam Child Support Program:

- a) All tribal accounting departments;
- b) Port Gamble S'Klallam Housing Authority;
- c) Port Gamble S'Klallam Natural Resources Department;
- d) Tribal enterprises;
- e) Any person or entity doing business on the Port Gamble S'Klallam Reservation; and
- f) Port Gamble S'Klallam TANF Program which shall also provide the following information about a party's TANF assistance:
 - i) Whether the person receives or has ever received TANF assistance;
 - ii) The names of other people on the person's TANF grant;
 - iii) The dates of the assistance; and
 - iv) The amount of assistance.
 - v) [HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.18 Port Gamble S'Klallam Child Support Program Authorized to Obtain Information- Domestic Violence Victim Protection

The Port Gamble S'Klallam Child Support Program is authorized to obtain otherwise confidential information about a party's income, resources and address from the tribal entities and employers listed in section 21.03. 17. The Program is authorized to request information from off-reservation employers, government agencies and other entities.

The Program and the Court shall take whatever steps are necessary to insure that the address or location of a victim of domestic violence is kept confidential.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.19 Proposed Agreed Orders -- Generally

The parties may agree to a proposed order which resolves some or all of the issues regarding establishment or modification of the child support obligation. The parties may agree that the male party is the father of the child.

The parties may request the Port Gamble S'Klallam Child Support Program to assist them to develop an agreed order.

A proposed agreed order shall be filed with the Court at or prior to the hearing.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.20 Child Support Hearing – Conduct

The following rules apply to child support hearings:

- a) Who May Attend. Only those persons the Court finds to have a legitimate interest in the proceedings may attend hearings under this chapter. A party may be represented by a spokesperson. Port Gamble S'Klallam Child Support Program staff may be present at child support hearings. If a party wants a friend, family member, or other person to be present, the Court may allow it.
- b) Hearing for Contested Case.
 - i) The Court shall review the documents filed in the case, hear the testimony of each party, and consider any other evidence presented. It shall consider and give great weight to the recommendation of the Port Gamble S'Klallam Child Support Program, if any.
 - ii) If a Port Gamble S'Klallam Child Support Program staff person is not available, the Court may either base its decision on the Program's written recommendation or issue a temporary order and continue the case until Program staff is available for a hearing. The temporary order terminates when the final order is entered or when the petition is dismissed.
 - iii) If a party believes the Port Gamble S'Klallam Child Support Program's recommendation or the Port Gamble S'Klallam Child Support Schedule is inappropriate as applied to him or her, the burden of proof shall rest on that party to prove that the

support obligation should be different than the recommendation or the Schedule.

- iv) The Court may continue the case at any point pending referral of the parties to the Port Gamble S'Klallam Child Support Program, if appropriate.
- c) Hearing for Proposed Agreed Order.
- i) Agreed Order – Complete. The Court shall approve a complete agreed order if the Port Gamble S'Klallam Child Support Program does not object, the Court has reason to believe the agreement was truly voluntary, and the agreed order contains all the provisions required by sections 21.03.22 and 21.03.23.
 - ii) Agreed Order – Partial. If the agreed order addresses some but not all of the required issues, the Court may approve the partial agreement and, if sufficient information is available, consider the remaining issues. If a complete order cannot be issued with the information available, the case shall be continued. The parties may be ordered to meet with the Port Gamble S'Klallam Child Support Program, if appropriate. The Court shall establish a time frame for the filing of the remainder of each party's proposal and the Program's additional recommendation. The Court may enter a temporary order based on the Port Gamble S'Klallam Child Support Guidelines and Schedule. The case will then proceed to a hearing on the remaining issues. The temporary order terminates when the final order is entered or when the petition is dismissed.
 - iii) In-Chambers Discussion. The Court may hold in-chambers, ex-parte (individual) discussions with each party to insure that they understand the proposed agreed order and to assure that each party's consent to the proposed agreement was not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person. If a party wants a friend, family member, or other person to be present, the Court shall allow it after first speaking alone with the party.
 - iv) Procedure When Agreement Found Not Voluntary. If the Court finds that the agreement was not truly voluntary, the case shall be continued and the parties shall be ordered to meet separately with the Port Gamble S'Klallam Child Support Program. The Court shall establish a time frame for the filing of each party's proposal and the Program's recommendation. The Court may enter a temporary order based on the Port Gamble S'Klallam Child Support Guidelines and Schedule. The case will then proceed to a full hearing on

the issues. The temporary order terminates when the final order is entered or when the petition is dismissed.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.21 Child Support Hearing - Establishment of Child Support Obligation

The Court shall establish the child support obligation, including providing for health insurance, as follows:

- a) If the parties have proposed a complete agreed order and the Port Gamble S'Klallam Child Support Program has not objected, the Court shall enter the agreed order.
- b) If the parties have proposed a partial agreed order and the Port Gamble S'Klallam Child Support Program has not objected, the Court may adopt the partial agreed order and, for the remaining issues, it may:
 - i) Adopt the Program recommendation, if any; or
 - ii) Hear evidence and establish the child support obligation by applying the Port Gamble S'Klallam Child Support Guidelines and Schedule to the circumstances of the parties.
- c) If the Court finds reason not to accept all or part of the recommendation of the Port Gamble S'Klallam Child Support Program, or if there is no such recommendation or proposed agreement, the Court shall hear evidence and establish the child support obligation by applying the Port Gamble S'Klallam Child Support Guidelines and Schedule to the circumstances of the parties.
- d) When the paying party owes past child support under a previous child support order, the Court shall order an additional amount of child support to be paid each month on the past child support debt. The total monthly amount ordered shall not exceed the upper limit of the Port Gamble S'Klallam Child Support Schedule's range for the paying party's income, unless the parties agree.
- e) Regardless of a – c, above, the Court shall adopt the method of payment (wage withholding or direct payment) requested by the party who will pay child support; except that if evidence is presented that the paying party has a history of non-payment of child support, the Court may order wage withholding or require the party to request his or her employer to withhold wages to pay the required child support.

- f) If a party requests that child support payments be made directly to a parent, the Court shall take testimony on how the parties intend to keep records of the direct payments so that the paying parent is credited with making each payment.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.22 Child Support Findings of Fact and Conclusions of Law– Content

After the hearing, the Court shall enter findings of fact and conclusions of law and a separate child support order. The findings of fact and conclusions of law shall include findings and conclusions regarding:

- a) The Court's subject matter jurisdiction over the case;
- b) The Court's personal jurisdiction over all the parties;
- c) The paternity of the child;
- d) The child support obligation of one or both parties, as agreed by the parties or, in the absence of agreement, as calculated using a form recommended by the Port Gamble S'Klallam Child Support Program and approved by the Court Administrator in accordance with the Port Gamble S'Klallam Child Support Guidelines and Schedule, sections 21.03.26 through 21.03.40;
- e) If the child support obligation deviates from the scheduled range for the paying party's income, the amount of support that would have been required and a justification as to why that amount is unjust or inappropriate;
- f) If the child support obligation is based on shared physical custody, the percentage of the year the child resides with each party;
- g) Date the child support obligation begins;
- h) The frequency of child support payments;
- i) If child support is to be established during the period prior to filing the child support petition, the recommendation of the Port Gamble S'Klallam Child Support Program regarding duration and amount of pre-filing child support;
- j) Circumstances under which the child support obligation will terminate;
- k) To whom or to what entity child support payments are to be made;

- l) How records will be kept of child support payments received if payment is not made to the Port Gamble S'Klallam Child Support Program;
- m) How child support payments may be enforced if necessary, and the following information:
 - i) Paying party's employer's name and address;
 - ii) Assets which could be attached if necessary for enforcement;
 - iii) Whether there is a spouse entitled to protection in case of Federal Income Tax Refund Offset.
- n) Previous child support orders applicable to the paying party or any of the children;
- o) The amount of any previous child support owed;
- p) In default child support cases, facts supporting service of the petition, summons and notice to respondent; and
- q) The extent to which the order differs from the recommendation of the Port Gamble S'Klallam Child Support Program.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.23 Child Support Order – Content and Effect

The child support order shall include:

- a) A statement that the Court has jurisdiction over the case;
- b) A statement that the Court shall have continuing, exclusive jurisdiction over the welfare of the child, including child support and modification of the order;
- c) A statement that the male party is the legal father of the child, if the parties so agree and paternity has not been previously established. If paternity has been previously established, the child support order does not need to address paternity. Port Gamble S'Klallam Tribe's public policy does not recognize default paternity orders;
- d) The child support obligation of one or both parties, including
 - i) The amount of cash to be paid to the other party;
 - ii) The amount of the cash payment which is allocated to work-related day care or health insurance, if any;

- iii) The amount of non-cash services or resources to be provided to the other party, if any;
- iv) The amount to be paid to third parties for day care, health insurance or extraordinary expenses, if any.
- e) The date the child support obligation begins;
- f) The frequency of child support payments;
- g) The duration and amount of any pre-filing child support obligation, as provided in section 21.03.35;
- h) A statement regarding the circumstances under which the child support obligation will terminate, as provided in section 21.03.37;
- i) A statement whether child support payments will be made by wage withholding or by direct payment to the Port Gamble S'Klallam Child Support Program or other entity, as provided in section 21.03.37, and a provision for record keeping if payment is not made to the Program;
- j) The amount of any credit against the child support obligation for benefits paid directly to the child, as provided in section 21.03.38;
- k) The amount of past child support owing on a previous child support order, if any, and provision for making payment of that debt, as provided in section 21.03.21 (d).
- l) A statement that each parent shall notify the Port Gamble S'Klallam Child Support Program of any change of employer or change of address within ten (10) days of the change;
- m) The date for a review hearings three (3) months after the order is issued and a statement that thereafter review hearings shall be scheduled every twelve (12) months after the order is issued, as provided in section 21.03.41; and
- n) A detailed description of the enforcement actions that may be taken in the event the parent owing child support fails to comply with the order.
- o) The child support order is final for purposes of appeal.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

DEFAULT ORDERS

21.03.24 Default Child Support Orders

When the respondent fails to appear or otherwise defend, the petitioner may file a motion, supported by an affidavit, for a default child support order. The Court does not have the authority to enter a default order of paternity. The Court may enter a default child support order upon finding the following:

- a) The Court has jurisdiction over the subject matter of the case and over the respondent;
- b) The respondent was given proper service of the petition and summons and proper notice of the hearing;
- c) The petitioner has stated, under oath, that he or she believes that the male party is the father of the child;
- d) The petition or the recommendation of the Port Gamble S'Klallam Child Support Program or the financial information, support establishment of respondent's obligation at the amount provided for in the default judgment. The amount shall be determined under the Port Gamble S'Klallam Guidelines and Schedule based on calculation of income as provided in section 21.03.29(e).

Notice of the default order shall be served on the respondent.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.25 Default Order – Set Aside

The Court may set aside a default child support order upon a showing of good cause.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

CHILD SUPPORT GUIDELINES AND SCHEDULE

21.03.26 Child Support Guidelines and Schedule – Purpose

The Port Gamble S'Klallam Child Support Guidelines set forth the rules under which a child support obligation is established. They set a standard of adequate support for children subject to the ability of the parents to pay.

The Port Gamble S'Klallam Child Support Schedule is the table of levels of cash child support that correspond to the income of the paying party. It is used according to the Guidelines and is intended to provide consistent treatment of individuals in similar circumstances.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.27 Child Support Guidelines and Schedule – How Are They Applied?

The Port Gamble S'Klallam Child Support Guidelines and Schedule are to be applied as follows:

- a) Parties. The parties may use the Child Support Guidelines and Schedule in reaching an agreement.
- b) Child Support Program. The Port Gamble S'Klallam Child Support Program shall be guided by the Child Support Guidelines and Schedule in assisting the parties to reach agreement. When the parties are not in full agreement on the amount of child support, the Program shall be guided by the Guidelines and Schedule in making its recommendation to the Court.
- c) Court. The Court will generally enter an agreed order, as provided in section 21.03.20 (c), or adopt the Port Gamble S'Klallam Child Support Program's recommendations. In those cases in which the Court does not do so, it shall apply the Port Gamble S'Klallam Child Support Guidelines and Schedule to the circumstances of the parties.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.28 How to Establish Child Support Obligation - Overview

A child support obligation is established under the Port Gamble S'Klallam Child Support Guidelines and Schedule in the following way:

- a) Calculate the monthly income of the party obliged to pay child support and subtract the allowable deductions;
- b) Determine the amount within the range that is appropriate to the circumstances of the family, based on the factors listed in section 21.03.31, except for health insurance,;
- c) Determine any amount of extra child support obligation for months when seasonal income is received, as provided in section 21.03.31(c);

- d) Add any additional amount required for health insurance, as provided in section 21.03.32, not to exceed the upper limit within the appropriate range; and
- e) Determine non-cash contributions in appropriate circumstances, as provided in section 21.03.33.
- f) Establishment of child support obligation when there is shared physical custody. In the absence of an agreement as to the amount of child support, when the parties each provide a home for the children and the children will spend a significant percentage of the year in each home, the Court may pro-rate the child support obligation between the parties.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.29 Calculation of Income as Basis for Child Support Obligation

The non-custodial party's obligation shall be based on his or her monthly income less allowable deductions.

- a) Income means revenue from any source including but not limited to:
 - i) Salaries, wages, tips, commissions and regular overtime;
 - ii) Business income such as sales of goods, services and products, whether legal or illegal;
 - iii) Deferred compensation;
 - iv) Income from second jobs;
 - v) Predictable, non-recurring income of over \$500;
 - vi) Regular bonuses;
 - vii) Treaty income;
 - viii) Per capita income;
 - ix) Lease or rental income;
 - x) Compensation received under a contract;
 - xi) Dividends;
 - xii) Severance pay;
 - xiii) Pensions;

- xiv) Interest, trust income, annuities, and capital gains; and
 - xv) Workers compensation benefits and unemployment insurance benefits.
- b) Allowable deductions from income include:
- i) Tribal taxes and stumpage fees;
 - ii) Federal and state income taxes;
 - iii) Social security (FICA) deductions;
 - iv) Mandatory pension plan payments;
 - v) Union or professional dues;
 - vi) State industrial insurance premiums;
 - vii) Normal business expenses allowable under IRS rules;
 - viii) Normal treaty income business expenses, determined by:
 - 1) The standard treaty income business expense deduction developed by the Port Gamble S’Klallam Tribal Council; or
 - 2) The IRS rules applicable to normal non-treaty business expenses; and
 - ix) Self-employment taxes for self-employed persons.
- c) Disclosure required. The following are not included in “income,” but must be disclosed:
- i) Social security benefits;
 - ii) Disability insurance benefits;
 - iii) Income from a second spouse or other adult in the household;
 - iv) TANF cash assistance, general assistance benefits, SSI, food stamps or other means-based benefits; and
 - v) Child support received by a parent for the support of other children.
- c) Calculation of income in default cases. In the absence of financial information from the defaulting parent, his or her income shall be based on information provided by the Port Gamble S’Klallam Child Support Program.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.30 Calculation of Child Support When There Are Children From Other Relationships

- a) Calculation of the amount of child support per child may be based on the party's total number of children under the following circumstances:
 - i) When a party has a legal duty to pay child support for a child from another relationship; or
 - ii) When a party has a legal duty to support a child from another relationship who resides with that party more than half of the time.
- b) Calculation of child support involving children from other relationships that meet the criteria of Sections 21.03.30(a), shall be calculated as follows: the minimum child support obligation shall be the maximum child support range listed in the child support schedule as divided by the total number of children the party has a legal duty to support, and the maximum range shall be the applicable range in the schedule without consideration of children from other relationships. The Court shall not set a child support obligation that falls below the minimum child support range listed in the child support schedule.
- c) If possible, the Court may make efforts to modify child support orders for children from other relationships as follows:
 - i) At the time a child support order is entered, the Court may modify any existing orders so that they are based on the total number of children from all relationships that the parent has a duty to support, consistent with the factors set forth at 21.03.31.
 - ii) If a preexisting child support order cannot be modified at the time the order is entered, the child support obligation for the child before the Court shall be established based on the number of children before the Court. The monthly obligation applicable to the child before the Court for the first six (6)

months shall, however, be reduced so that the total child support paid to all persons during that period does not exceed the scheduled amount for the total number of children from all relationships. During this six (6) month period, the Port Gamble S'Klallam Child Support Program shall assist the party with modification of the preexisting child support order(s). At the expiration of the six (6) month period, the Court shall conduct a hearing to review modification efforts. The six (6) month period may be continued for good cause. Upon modification of the previous order(s), the Court may modify its order based on the total number of children from all relationships.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation. Amended by Res. No. 22-A-138, passed 8/22/22, to prioritize fairness, provide clarification, and improve the court process for establishing or modifying a child support obligation.]

21.03.31 Adjustments Within Schedule Ranges

A child support obligation established under these Guidelines shall be set within the range provided in the Schedule for the income level of the paying party. In determining the appropriate amount within the range, the factors in this section shall guide the parties' agreement, the Port Gamble S'Klallam Child Support Program and the Court.

- a) Number of children. The obligation shall be set lower in the range if there is only one child, higher if there are more children.
- b) Age of child. The obligation shall be set higher in the range for children 12 years old and older and closer to the lower end of the range for younger children.
- c) Work-related day care. The obligation may be set higher in the range to cover the reasonable cost of work-related day care of the custodial parent. "Reasonable cost" shall not exceed the cost of day care provided through the Tribe. This obligation shall terminate if work-related day care is terminated or it shall be reduced proportionately if the child is in work-related day care for a reduced period of time.
- d) Seasonal income. If the paying party's income is seasonal, the obligation may be set on a schedule that varies the amount at different times of the year;

- e) Extraordinary medical expenses for the child. The obligation may be set higher in the range to cover extraordinary medical expenses for the child, not covered by health insurance.
- f) Extraordinary debt not voluntarily incurred. The obligation may be set lower in the range when the party owing support makes payments on extraordinary debt not voluntarily incurred such as court fines;
- g) Use of non-cash services or resources. The obligation may be set lower in the range when non-cash services or resources are regularly and reliably provided, as set forth in section 21.03.33.
- h) Possession of wealth. The obligation may be set higher in the range when the parent owing support possesses significant wealth.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.32 Health Insurance

The Port Gamble S’Klallam Child Support Program shall make a recommendation as to the best health insurance coverage for the child. The Court shall include provision of health insurance for the child in every child support order.

- a) When health insurance is available at reasonable cost through one or both party’s employment or union, that party (or both parties) shall provide coverage. “Reasonable cost” for the parent with the child support obligation means that when the child’s portion of the health insurance premium is added to the basic child support obligation, the total obligation does not exceed the upper limit of the range.
- b) If health insurance is not available to either party at reasonable cost, a \$0 health insurance order shall be entered. If the child is eligible for health care services through the Port Gamble S’Klallam Tribe, another tribe or Indian Health Services, one or both parties shall be ordered to cooperate with the appropriate entity to obtain services for the child.
- c) Routine medical expenses are included within the Child Support Schedule.

The Port Gamble S’Klallam Child Support Program may make arrangements to enroll a child in a health insurance plan, consistent with a court order on health insurance.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.33 Non-Cash Services and Resources

Although consistent with Port Gamble S'Klallam culture and tradition, non-cash services and resources are difficult to monitor and guarantee. The primary purpose for their use in connection with cash child support is to strengthen the bond between the child and the non-custodial parent. Non-cash services and resources are not a substitute for cash child support obligation.

- a) The non-custodial parent may be ordered to provide non-cash services and resources in connection with the child support obligation under the following circumstances:
 - i) When the parties agree;
 - ii) When the non-custodial parent's income is below the minimum income level for ordering cash child support in the Child Support Schedule;
 - iii) When the non-custodial parent's income is insufficient to cover the obligation(s) for the total number of children from all relationships;
 - iv) When the non-custodial parent is a teenager in school;
 - v) When the non-cash services and resources are regular and reliable so that the obligation may be established lower in the range.
- b) The child support order shall specify the quantity, quality, condition and frequency of the non-cash services and resources.
- c) Members of the non-custodial parent's extended family are welcome to contribute non-cash services and resources. They may be credited to the non-custodial parent's obligation if they meet the court's requirements.
- d) Non-cash services and resources may include, but are not limited to:
 - i) Help with extra sports and school activities or expenses;
 - ii) Day care provided by the non-custodial parent;
 - iii) School clothes;
 - iv) Car or home maintenance or repair;
 - v) Firewood, fish, shellfish, game, or berries, but only by agreement of the parties;

- vi) Tutoring or volunteering at the child's school;
- vii) Transportation to the child's activities;
- viii) Pow wow regalia;
- ix) Teaching treaty skills or cultural knowledge.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.34 Deviation from Schedule—Public Policy -- Written Findings.

It is against the public policy of the Port Gamble S'Klallam Tribe to establish or enforce a non-voluntary child support order outside the range in the Port Gamble S'Klallam Child Support Schedule that corresponds with the paying party's income level.

The Port Gamble S'Klallam Child Support Program may recommend and the Court may order a child support obligation set under the Guidelines which is outside the range in the Schedule only if the obligation is supported by agreement of the parties. If the child support order deviates from the range in the Schedule, the Court shall enter a written finding stating the amount of support that would have been required under the Schedule and justification as to why that amount would be unjust or inappropriate.

[HIST: For example, if the top of the range is \$250 and the parties agree to \$300, the order shall so state. Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]]

21.03.35 Child Support Obligation —When Does It Begin?

Establishing a child support obligation for a period prior to the date of filing the case in Court is disfavored under Port Gamble S'Klallam law. This is due to the difficulty in obtaining accurate past financial information and because of the burden on the paying party if the party is also paying current support.

There are some circumstances when it is appropriate to have a \$0 or de-minimus order for the period before filing.

In every case where child support is ordered for any period before filing, there must be a recommendation by the Port Gamble S'Klallam Child Support Program regarding the duration and amount of pre-filing child support.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.36 Child Support Obligation – When Does It End?

A parent's financial duties last until:

- a) The death of the child;
- b) The death of the parent obliged to pay support; or
- c) A child is eighteen years old or, if the child is still in high school, until graduation or the child turns nineteen, whichever is earlier.

The child support obligation terminates at the end of the month in which the financial duty terminates.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.37 Payment of Support Obligation – To Whom Paid

Payment of a child support obligation shall be made to the Port Gamble S'Klallam Child Support Program for distribution to the appropriate recipient, as provided in section 21.03.68.

If the Port Gamble S'Klallam Child Support Program becomes aware that a child is no longer living with the person receiving child support on behalf of the child, the Program or the paying party may request a review hearing to determine to whom the child support payments will be disbursed for the benefit of the child.

If the parties agree or the Court finds it to be in the best interests of the child, it may order:

- a) Allowance to Child. A portion of the cash support to be disbursed to the child as an allowance; or
- b) Trust or Savings Account. A portion of the cash support to be deposited into a trust or savings account for the benefit of the child under such terms as the Court deems just.

[HIST: There may be circumstances when payment to the Registry of a state or another tribe would be appropriate. The Port Gamble S'Klallam Child Support Program will usually identify those circumstances. Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.38 Credit for Benefits

When a child receives benefit payments such as social security, veterans, or Labor and Industries, as a result of contributions made by the party with the child support obligation, credit shall be given to offset all or part of the child support obligation, in the amount of the payment. The Court shall indicate in the child support order the total child support obligation and the amount that shall be covered by benefit payments made directly to the child. If the benefit payment is more than the current child support obligation, the difference shall be credited against any arrears that the custodian has not assigned to a government.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.39 Child Support Schedule – Basis and Review

- a) Basis. The Port Gamble S’Klallam Child Support Schedule:
 - i) Is based on specific descriptive and numeric criteria and results in a computation of an amount of child support which is sufficient to meet the basic needs of a child for housing, clothing, food, education, health care, recreation, and goods and services required by physical or mental disability;
 - ii) Is based on the income of the non-custodial parent and the number of children there is a duty to support;
 - iii) Provides for a range of payment levels for each income category. The level shall be adjusted to the circumstances of each case according to the factors set forth in section 21.03.31, Adjustments within Schedule Ranges.
- b) Review Requirement. The Guidelines and Schedule shall be reviewed by the Port Gamble S’Klallam Child Support Program every four years and any recommendations for amendment shall be provided to the Port Gamble S’Klallam Tribal Council.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation. Amended by Res. No. 22-A-138, passed 8/22/22, to change the review period from four to three years to correspond to the applicable federal regulations.]

21.03.40 Child Support Schedule

INCOME AFTER ALLOWED DEDUCTIONS	<u>Minimum Child Support</u> (Example: one child, no day care or health insurance)	<u>Maximum Child Support</u> (Example: multiple children, day care, health insurance)
\$0 - 499	\$25 per month, per child	\$25 per month, per child
\$500 - 799	5%	10%
\$800 - 999	8%	11%
\$1,000 - 1,499	10%	15%
\$1,500 - 1,999	11%	15%
\$2,000 - 2,499	12%	20%
\$2,500 - 2,999	13%	20%
\$3,000 - 3,499	14%	20%
\$3,500 - 3,999	15%	25%
\$4,000 - and above	16%	25%

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation and added this section. Resolution No. 14 A 20, passed 2/25/14, amended this section to add income brackets, increase Child Support percentages, and add \$25 per month maximum obligation for income brackets between \$0-499 per month. Amended by Res. No. 22-A-138, passed 8/22/22, to increase the range for the minimum child support obligation.]

REVIEW HEARINGS

21.03.41 Child Support Review Hearings

- a) Purpose. The primary purpose of a child support review hearing is to give the parties and the Court an opportunity to ensure that child support payments are being made as provided in the order. Either party may also
 - i) Raise questions or concerns they have about a Parenting Plan;
 - ii) Move for modification of the child support order; or
 - iii) Request payments as provided in (f) and (g), below.

- b) Timing. A mandatory review hearing shall be scheduled three (3) months after the child support order was issued. Thereafter, review hearings shall be scheduled every twelve months after the child support order was issued. The date for the first review hearing shall be set by the Court at the time the order is issued and no further notice of that hearing is necessary. The Port Gamble S'Klallam Child Support Program shall notify the Court when it is time to schedule the annual review hearing for each case. The Court may order additional review hearings if it is necessary.
- c) Waiver. Except for the first, mandatory review hearing, a review hearing may be waived if both parties file a request to waive the hearing and the Port Gamble S'Klallam Child Support Program agrees to the waiver. The Court may waive the first mandatory review hearing at the request of the Port Gamble S'Klallam Child Support Program or either party in the case of a \$0.00 child support order.
- d) Enforcement of Child Support Order. If child support payments have not been made as required by the order, the Port Gamble S'Klallam Child Support Program shall make a recommendation to the Court regarding appropriate enforcement of the child support order. If the Court finds that a child support obligation is overdue or if there is a history of non-compliance with the order, the Court shall order wage withholding or other means of enforcement, as provided in sections 21.03.51 and 21.03.56.
- e) Modification of Child Support Order. Review hearings are not intended to be annual modification hearings. However, a party may file a motion for modification, as provided in section 21.03.43 prior to the review hearing and, if timely filed, the Court may schedule a hearing on modification at the same time as the review hearing.
- f) Payment for Extraordinary Medical Expenses. The Court may order the paying party to make payment(s) in addition to the regular child support payments upon presentation of receipts or other proper proof that the child has had extraordinary medical expenses as provided in section 21.03.31 (d). Adjustments may be added to future payments, provided that no total monthly payment may exceed the upper limit of the scheduled range for the income of the paying party.
- g) Reimbursement. Upon presentation of receipts or other proper proof, the Court may order:
 - i) Reimbursement to the paying party for work-related day care expenses paid but not utilized by the receiving party for work or work-related activities;

- ii) Repayment to the Tribe by the party who received child support on behalf of a child who stopped residing for a month or longer with the that party, if payment was originally made to the Tribe.

Overpayment reimbursement shall be applied first to arrears owed. If no arrears are owed, the reimbursement may be paid directly or applied as a credit against future support.

- h) Suspension. Upon the request of a party or the Port Gamble S’Klallam Child Support Program, the Court may temporarily suspend a party’s child support obligation based on the agreement of the parties, a change in legal or physical custody of a child, a temporary change in income, placement of a child in a healthcare treatment facility, or for other good cause shown. A suspension of a child support obligation shall be temporary, and shall not exceed six (6) months. If the Court temporarily suspends a child support obligation, the Court shall set a review hearing not more than six (6) months from the effective date of the suspension. The six (6) month period may be continued for good cause.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation. Amended by Res. No. 22-A-138, passed 8/22/22, to provide parties the opportunity to waive a review hearing in the case of a \$0 child support order, eliminate duplicative and potentially conflicting language, and to codify the Program and Court practice of suspending a child support obligation under certain circumstances.]

21.03.42 Accounting by Parent Receiving Child Support Payments

- a) If the party paying child support believes that child support payments are being spent inappropriately, he or she may request the Court or the Port Gamble S’Klallam Child Support Program to obtain an accounting from the other party.
- b) Upon request by the Port Gamble S’Klallam Child Support Program or the Court, the party receiving child support payments shall provide an accounting of how the child support money has been expended for the benefit of the child.
- c) The Court may order an accounting on its own motion.
- d) If the party paying child support believes that child support payments are being squandered and the child is not being adequately cared for, he or she may file a report with the Port Gamble S’Klallam Indian Child Welfare Program or Tribal Law Enforcement stating that he or she believes the child is a “child in need of care.”

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

MODIFICATION OF CHILD SUPPORT ORDERS

21.03.43 Modification of Port Gamble S'Klallam Child Support Orders

When there has been a substantial change in the income of the paying party or other factors that determined the original child support obligation, a party may request, by motion, modification of a Port Gamble S'Klallam Community Court child support order.

- a) A motion for a modification of child support shall be accompanied by an affidavit setting forth the factual basis for the motion and the modification requested.
- b) The party obligated to pay child support, or both parties, if the child is eligible for social security benefits or the parties share equal residential time with the child, shall file updated financial information forms at least ten (10) days before the modification hearing, except that:
 - i) In agreed modification orders no financial information need be filed with the Court; and
 - ii) A party is not required to provide his or her financial information as part of the Court record provided the party has made full and complete financial disclosure to the Port Gamble S'Klallam Child Support Program and the Program has certified that it has reviewed the financial information and its recommendation is based upon that information.
- c) Child support orders may be modified for future support only. Amounts of past due support shall not be modified except as provided in 21.03.69 through 21.03.76, "Reduction of Past Support Owed."

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation. Amended by Res. No. 22-A-138, passed 8/22/22, to eliminate unnecessary paperwork and documentation submission from custodial parent.]

21.03.44 Modification of Foreign Child Support Court Orders

A party may request modification of a foreign child support order by filing a child support petition including all the information set forth in section 21.03.06, as well as a copy of the foreign child support order.

- a) The Court shall refer the modification petition to the Port Gamble S’Klallam Child Support Program for its recommendation.
- b) The Court may modify an order issued by another nation, state or tribe if the Tribe has jurisdiction to make a child support order; and
 - i) The court of the other nation, state or tribe no longer has continuing, exclusive jurisdiction of the child support order because that jurisdiction is no longer the child’s state or tribe or the residence of any party; or
 - ii) Both parties have agreed to the Port Gamble S’Klallam Community Court assuming jurisdiction over the modification.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.45 Modification of Foreign Child Support Administrative Orders

A child support order of the Port Gamble S’Klallam Community Court supercedes an administrative order of another nation, state or tribe.

If a party wishes to have a Port Gamble S’Klallam Community Court child support order replace a foreign administrative child support order, he or she may file a child support petition including all the information set forth in section 21.03.06, as well as a copy of the foreign administrative order.

The Port Gamble S’Klallam child support order shall address all time periods covered by the foreign administrative order.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

ENFORCEMENT OF CHILD SUPPORT ORDERS

21.03.46 How to Enforce a Child Support Order – Types of Hearings

The Court may enforce a child support order by ordering wage withholding or other means of enforcement at the following hearings:

- a) At an enforcement hearing, if a child support obligation is at least 30 days overdue in an amount equal to one month’s child support obligation or if there is a history of non-compliance; or
- b) At a regularly scheduled review hearing, if child support is overdue at the time of the review hearing or if there is a history of non-compliance with the order.

[Cross-Reference: Review Hearing, section 21.03.41]

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.47 Enforcement Hearing

- a) Who May File Motion. A motion for an enforcement hearing may be filed only by:
 - i) A parent; or
 - ii) The Port Gamble S'Klallam Child Support Program.
- b) Affidavit Contents. The motion shall be supported by an affidavit containing:
 - i) Terms of the child support order to be enforced;
 - ii) Length of time the child support obligation has been overdue, which must be at least 30 days or facts supporting a history of non-compliance; and
 - iii) Amount of child support that is overdue, which must be equal to one month's child support obligation.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation. Amended by Res. No. 22-A-138, passed 8/22/22, to eliminate duplicative and potentially conflicting language.]

21.03.48 Enforcement Hearing – Program Recommendation

The Port Gamble S'Klallam Child Support Program shall file a recommendation regarding appropriate enforcement action in every case filed by a parent. In a case filed by the Program, the recommendation shall be included in the Program's motion for the enforcement hearing.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.49 Enforcement Hearing -- Notice

The notice for the enforcement hearing shall be served as provided in sections 21.01.15, 21.01.16, and 21.03.07. It shall contain the following:

- a) Copy of the motion and affidavit;
- b) The time and date of the hearing;

- c) Notice that if the parent owing support fails to attend the hearing, wage withholding or other enforcement action will be ordered.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.50 Enforcement Hearing – Procedure

At the enforcement hearing the Court shall:

- a) Review the affidavit and any supporting documents, hear the testimony of each party, consider any other evidence presented, and consider and give great weight to the recommendation of the Port Gamble S'Klallam Child Support Program, if any.
- b) If the moving party meets the burden of proving that the child support obligation is at least 30 days overdue in an amount equal to one month's child support obligation or that the party has a history of non-compliance, the Court shall order wage withholding, as provided in section 21.03.51, or other means of enforcement, as provided in section 21.03.56.
- c) If the moving party does not meet the burden of proof, the Court shall dismiss the motion.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.51 Child Support Enforcement – Wage Withholding

At a review hearing or at an enforcement hearing, wage withholding shall be the primary means of enforcement of a child support order where a parent receives wages, unless:

- a) The parties agree in writing to alternate arrangements which the Court approves;
- b) The party owing child support works for a Tribe or a tribal enterprise that has not waived its sovereign immunity for that purpose, in which case the Court shall order that party to arrange wage withholding of child support with his or her employer;
- c) The parent owing child support demonstrates good cause not to require immediate wage withholding; or
- d) The Court finds that another means of enforcement would be more effective.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.52 Wage Withholding – Contents of Order or Request

A wage withholding order shall not exceed the upper limit of the Port Gamble S’Klallam Child Support Schedule’s range for the paying party’s income, unless the parties agree. The Court shall order that an additional amount be withheld each month to be applied to past payments owed.

The wage withholding order or request shall include:

- a) The amount to be withheld and the frequency of the withholding;
- b) A requirement that the employer send the amount to the Tribe within seven (7) business days of the date the paying party is paid;
- c) A requirement that the employer report to the Tribal Child Support Program the date on which the amount was withheld;
- d) A requirement that the employer remit the amount withheld to the Tribe until further notice by the Tribe.
- e) A statement that the employer shall notify the Tribe promptly when the paying party terminates employment and provide the paying party’s last known address and the name and address of the paying party’s new employer, if known.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.53 Wage Withholding -- Procedure

The Court shall serve the wage withholding order or the party’s wage withholding request on the employer or other payor. The Court Administrator is authorized to approve wage withholding forms recommended by the Port Gamble S’Klallam Child Support Program.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.54 Wage Withholding -- Release

The wage withholding order or request shall be effective until the Court or the Port Gamble S’Klallam Child Support Program issues a release or authorizes the party to issue a release.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.55 Wage Withholding– Employers Must Honor – Retaliation Prohibited

- a) No employer shall refuse to honor a wage withholding order or a party’s wage withholding request issued under this chapter. An employer shall begin withholding within seven days after service of the order or request. Failure to withhold wages according to the order or request subjects the employer to liability for the accumulated amount the employer should have withheld.
- b) No employer may discharge, refuse to employ or take disciplinary action against any employee because his or her wages have been subjected to withholding for child support. Failure to comply with this section subjects the employer to a fine to be determined under tribal law.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.56 Child Support Enforcement – Other Means in Addition to Wage Withholding

At a review hearing or an enforcement hearing, the Court may order any of the following actions in addition to or instead of wage withholding:

- a) A Federal Income Tax Refund Offset may be obtained by the Port Gamble S’Klallam Child Support Program as provided in section 21.03.59.
- b) Attachment of assets, as provided in chapter 3.09 except that the federal Order to Withhold and Deliver form shall be used where applicable;
- c) Interception of federal payments, such as retirement, travel or expense reimbursement;
- d) Appearance before a Port Gamble S’Klallam Elders Panel to explain non-payment.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.57 Exemptions from Enforcement Actions

In the enforcement of any child support order, the following shall be exempt from execution except as specifically provided herein:

- a) TANF benefits, SSI;
- b) All wearing apparel of every person in the family except that only \$500 in value in furs, jewelry, beadwork, and personal ornaments for the person owing the child support obligation;
- c) Items of bona fide religious or cultural significance;
- d) Tools, equipment, boats, gear, vehicles, instruments and materials used by the person to obtain income;
- e) Provisions and fuel for the comfortable maintenance of the home for three months;
- f) Any real property on the Port Gamble S’Klallam reservation; and
- g) A motor vehicle not exceeding \$2,500 in value.

[HIST: This section is intended to supercede section 3.09.10. Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation. Resolution No. 14 A 20, passed 2/25/14, amended this section to allow the Child Support Program to enforce an order against Unemployment income and other Social Security benefits.]

21.03.58 Child Support Enforcement -- Role of Child Support Program

The Port Gamble S’Klallam Child Support Program has the sole authority to arrange for implementation of a child support enforcement order, including wage withholding and other means of enforcement.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.59 Federal Income Tax Refund Offset

The Port Gamble S’Klallam Child Support Program has sole authority to:

- a) Receive funds certified by a state under the Federal Income Tax Refund Offset Program and owed on a Port Gamble S’Klallam child support case;
- b) Request that a state certify a Port Gamble S’Klallam child support case to the Federal Income Tax Refund Offset Program;
- c) Certify a Port Gamble S’Klallam child support case to the Federal Income Tax Refund Offset Program to receive funds for that case.

The Port Gamble S’Klallam Child Support Program may offer assistance to help Port Gamble S’Klallam families file “injured spouse” claims with the Federal Income Tax Refund Offset Program when appropriate.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.60 Failure to Comply with Child Support Order – Contempt of Court

Failure to comply with any order issued in a Port Gamble S’Klallam child support case, including a wage withholding order and a court order to request wage withholding, may be punishable as contempt of court.

The Court may sentence any person who fails to comply with an order issued in a Port Gamble S’Klallam child support case guilty of civil contempt. The Court may impose the penalties for civil contempt as provided in chapter 1.06, and a civil fine not to exceed \$500.00 for each instance of civil contempt.

[Cross-reference: chapter 1.06 Contempt of Court.]

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation. Amended by Res. No. 22-A-138, passed 8/22/22, to add clarity and detail regarding civil contempt charges.]

21.03.61 Non-Payment of Child Support – Effect on Custody/Visitation

If a party fails to comply with a child support order or a provision in a Parenting Plan, the other party’s obligations under the Parenting Plan or child support order are not affected. This means that you cannot withhold visitation if the other party doesn’t pay child support.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

TANF RECIPIENTS’ TRANSFER OF RIGHTS (ASSIGNMENT)

21.03.62 Transfer of TANF Recipients’ Rights to Child Support – Purpose

The child support rights of a child who receives Port Gamble S’Klallam Tribal TANF are transferred (assigned) to the Tribe because the Tribe is providing support for the child during a time period when child support payments should be helping to support the child. When child support payments are made on an irregular basis, a family has no financial stability.

The Tribe can assist the family achieve financial independence by providing reliable, predictable TANF assistance while collecting child support owed to the child. When child support payments are made to the Tribe through an assignment, the payments are not counted as income of the TANF recipient and therefore they do not cause fluctuations in his or

her TANF grant. The paying party's financial connection with the child is maintained through the child support pass-through, where applicable.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.63 Transfer of TANF Recipients' Rights to Child Support – By Operation of Law

When a child receives TANF cash assistance from the Port Gamble S'Klallam Tribal Family Assistance Program, his or her rights to past, present and future child support are deemed to be transferred (assigned) to the Port Gamble S'Klallam Tribe, subject to the limitations set forth in this code.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.64 Nature of Rights Transferred

When rights are transferred (assigned) to the Tribe under this code, they are characterized as temporary or permanent which means:

- a) Temporary transfer (assignment) of rights to past child support became due before the family began receiving TANF cash assistance. The transfer of these rights is temporary, which means that the child support may be collected and held by the Tribe but it may not be utilized to reimburse the Tribe for the child's TANF grant. While it is held by the Tribe, it shall not be considered an asset of the family. This transfer terminates when the child stops receiving TANF cash assistance and any temporarily transferred funds collected by the Tribe shall be paid to the payee under the child support order.
- b) Permanent transfer (assignment) of rights to past, present and future child support becomes due while the family is receiving TANF cash assistance. The transfer of these rights is permanent. The amount of this transfer is limited to the amount of TANF cash assistance received for the child covered by the child support obligation or the child support obligation for that child, whichever is less. This transfer terminates when the child stops receiving TANF cash assistance.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.65 Child Support Retained Under a Transfer of Rights

Child support payments retained by the Tribe under a permanent TANF assignment shall be expended for the benefit of the Port Gamble S'Klallam Tribe's children and their families.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.66 TANF Recipients' Pass-Through

Money received by the Tribe under a TANF recipient's child support transfer of rights may be used to provide a pass-through payment to that TANF recipient on behalf of the child. Such a pass-through payment shall not be considered income for purposes of TANF eligibility or counted against the amount of the grant. The amount of a uniform pass-through payment to TANF recipients shall be determined by regulation of the Tribal Council.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.67 Certification of Good Cause

The Port Gamble S'Klallam Child Support Program is authorized to certify that there is good cause not to establish paternity or child support in cases in which it is not in the best interests of the child to do so.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

CHILD SUPPORT DISTRIBUTION

21.03.68 Distribution of Child Support Payments

- a) Except as provided in sub-section (b), child support payments made to the Tribe shall be distributed in the following order of preference within each case:
 - i) Payment of current support;
 - ii) Payment of the custodian's arrears;
 - iii) Payment of transferred (assigned) arrears.
- b) Distribution of IRS Arrears Payments. Lump-sum payments from Federal Income Tax Refund Offsets shall be distributed in the following order of preference:

- i) Payment as pass-through to a custodial party receiving Tribal TANF cash assistance, if there is no current child support payment to apply to the pass-through. These payments shall be credited against arrears assigned to the Port Gamble S’Klallam Tribe.
 - ii) Payment of transferred (assigned) arrears;
 - iii) Payment of the custodian’s arrears.
- c) Distribution to multiple payees. If the person with the child support obligation owes child support on more than one case, distribution shall be as follows:
- i) Current support: If there is not enough to pay all current support owing, the available funds shall be pro-rated to each case according to that case’s share of the total current support owing on all cases.
 - ii) Arrears: If there is money left over after all current support has been paid, the available funds shall be applied to the arrears owing on all cases, pro-rated to each case according to that case’s share of the total arrears owed on all cases. Within each case, the money is first applied to any arrears owed the custodian and next to TANF arrears.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

REDUCTION OF PAST CHILD SUPPORT OWED

21.03.69 Reduction of Past Child Support Owed – Purpose

This section allows the Court to forgive back unpaid child support under certain circumstances. The child support policies of outside governments have frequently created hardship for Port Gamble S’Klallam children and their families: for example, when income is imputed and creates large back debts, when the child’s parents reunite and collection action on the past debt takes away resources from the child, when collection action is taken against individuals who are caring for their adult children and grandchildren, and other actions which offend Port Gamble S’Klallam tribal values of fairness and due process.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.70 Reduction of Past Child Support Owed – Types of Debt

- a) Debt to Parent or Custodian: A debt of past child support owed to the parent or custodian on behalf of the child may be reduced only by agreement of the parties.
- b) Debt to Tribe or State: A debt of past child support owed to a government for reimbursement for public assistance may be reduced or eliminated as provided in this code.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.71 Reduction of Child Support Owed – Petition

A party who wishes to reduce a debt for past child support may file a petition for Reduction of Past Child Support Debt. The petition shall be prepared on a form approved by the Court Administrator and it shall contain:

- a) The name, address, tribal affiliation, date and place of birth and social security number of the petitioner and the child for whose benefit the child support was ordered;
- b) The name, address, tribal affiliation, date and place of birth and social security number of the person to whom the child support is owed or was originally owed;
- c) If the debt is owed to a government for reimbursement for public assistance, the name and address of the appropriate government agency;
- d) A copy of the child support order under which the debt accumulated;
- e) The total amount of the past child support debt;
- f) The amount of proposed reduction of the past child support debt;
- g) The reason why the past child support debt should be reduced or eliminated;
- h) Financial information, as provided in section 21.03.15; and
- i) The recommendation of the Port Gamble S’Klallam Child Support Program.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.72 Reduction of Child Support Owed -- Notice Procedure

- a) Setting the Initial Hearing. When the Court receives a petition, it shall set a hearing date which shall not be more than thirty-five (35) calendar days after the petition was received, unless continued for good cause.
- b) Notice of Hearing. The date, time and place of the hearing shall be contained in the summons.
- c) Service of Petition and Summons. After a petition is filed, the petitioner shall cause the respondent to be served with a copy of the petition and a summons. The petition and summons shall be served as provided in section 21.01.10. The parties may sign a petition and by doing so, waive the requirements of service of the petition and summons.
- d) Summons – Content. The summons, prepared on a form approved by the Court Administrator, shall notify the respondent that if he or she does not appear or respond to the petition within twenty (20) days from the date of service or within 60 days of the date of publication if service is by publication, the Court may proceed without the respondent.
- e) Summons – Proof of Service. The person serving the summons and petition shall file with the Court certification that he or she has served the respondent, including the date and place of service. If service was made on a person other than the respondent, the certification shall state the name of the person served, the date and place of service, and the instructions given. In case of service by certified mail, the return receipt shall be filed with the Court and shall constitute the proof of service. In case of service by publication, an affidavit by the person causing publication and a copy of the summons as published shall constitute the proof of service.
- f) Response. Unless the parties have filed a joint petition, the respondent shall file his or her response within twenty (20) calendar days after the respondent is served with a copy of the petition, or within sixty (60) days if service was by publication. The respondent shall cause the response to be served on the petitioner as provided in section 21.01.16.
- g) Notice to Agency. If the past child support debt is owed to a government, notice shall be served on the appropriate agency of the government. The person who assigned the child support rights to the government need not be a party to the hearing if the entire child support debt is owed to the government.
- h) Hearing. At the hearing:

- i) The Court shall review the documents filed in the case, hear the testimony of each party, and consider any other evidence presented. It shall consider and give great weight to the recommendation of the Port Gamble S'Klallam Child Support Program, if any.
- ii) The burden of proof shall rest on the moving party to prove that the support obligation should be reduced, as provided in section 21.03.73.
- iii) If the parties have proposed an agreed order and the Port Gamble S'Klallam Child Support Program has not objected, the Court shall enter the agreed order.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.73 Reduction of Past Support Owed to a Tribe or State

The Court may grant a reduction or complete forgiveness of past support owed to a tribe or state when: 1) the past debt was not based on the paying parent's actual income, or 2) payment of the past debt would create substantial hardship.

- a) Substantial hardship shall include the following circumstances:
 - i) The child on whose behalf the past debt accumulated is now living with and being supported by both parents who are reunited; or
 - ii) The child on whose behalf the past debt accumulated is now living with and being supported by the party owing the past support debt.
- b) Substantial hardship may include the following circumstances:
 - i) The party owing the past support debt is complying with the current child support obligation for the child on whose behalf the past debt accumulated and he or she has insufficient resources to pay both current and past support;
 - ii) The party owing the past support debt is currently supporting other children, grandchildren or elders and payment of the past support debt would prevent him/her from adequately supporting him/herself and the others; or
 - iii) The child on whose behalf the past debt accumulated is over 18 years old and payment of the debt would significantly burden the party's ability to support him/herself.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.74 Reduction of Past Child Support Owed to a Parent

When a parent agrees to a reduction or complete forgiveness of past child support owed to him or her, the Court may hold an in-chambers, ex-parte (individual) discussion with this parent to ensure that he or she:

- a) Understands the proposed agreed order;
- b) Consents to the proposed agreement;
- c) The proposed agreement was not the result of coercion, threat, duress, fraud, over-reaching, or improper promise.

If the parent wants a friend, family member, or other person to be present, the Court shall allow it, after first speaking alone with the party. If a party is unavailable or chooses not to be at the hearing, he or she may submit an affidavit verifying the agreement.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.75 Reduction of Past Child Support Owed – Findings and Conclusions

After the hearing, the Court shall enter findings of fact and conclusions of law and a separate Reduction of Past Child Support Owed Order. The findings of fact and conclusions of law shall address:

- a) Subject matter jurisdiction;
- b) Personal jurisdiction over all the parties;
- c) The total amount of past child support owed and to whom it is owed;
- d) The basis for the decision, including the agreement of the person to whom the child support debt is owed, if a parent;
- e) The amount of reduction of past child support, if any; and
- f) The conditions, if any, upon which reduction of the past child support debt is contingent.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

21.03.76 Reduction of Past Child Support Owed – Order

The Port Gamble S'Klallam Child Support Program may recommend, and the Court may fashion an order, making the reduction of past support contingent upon making timely payments of current support as well as timely payments on the arrears not forgiven. It is the policy of the Port Gamble S'Klallam Tribe to attempt to create orders for the reduction of past child support which are most likely to be carried out successfully.

The Reduction of Past Child Support Owed Order shall include:

- a) A statement that the Court has jurisdiction over the case;
- b) The total amount of the child support debt;
- c) The amount of reduction of the child support debt; and
- d) The conditions, if any, upon which reduction of the past child support debt is contingent.

[HIST: Source - Resolution No. 01 A 117, passed 12/11/01, adopted Title 21 on an interim basis. Resolution No. 02 A 098, passed 9/10/02, adopted Title 21 as permanent legislation.]

Chapter 21.04 Divorce, Invalidity of Marriage and Legal Separation

21.04.01 Purpose

The purpose of this chapter is to provide a straightforward procedure so that marriages may be ended in the most harmonious way possible.

This chapter deals with issues related to the spouses during a divorce. chapters 21.03, Child Support and 21.05, Child Custody deal with issues related to the children during and following divorce. The well-being of children has long been of utmost importance to the Port Gamble S'Klallam Tribe. In divorces involving children, the policies stated in sections 21.03.01 and 21.05.01 shall guide the interpretation of this chapter.

This chapter may be used to divide the property and debts of unmarried couples. The restraining order provisions may be used to protect an unmarried party.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.04.02 Jurisdiction

- a) Subject Matter Jurisdiction. The Community Court shall have jurisdiction over the subject matter of this chapter when:
 - i) One of the parties or children is an enrolled member of the Port Gamble S'Klallam Tribe; or
 - ii) One of the parties is a resident of the Port Gamble S'Klallam reservation.
- b) Personal Jurisdiction. When the Court does not have personal jurisdiction over a respondent and the respondent does not submit voluntarily to the Court's jurisdiction, a decree of Divorce, Invalidity of Marriage or Legal Separation may be issued if:
 - i) The respondent was given notice as provided in section 21.04.09 and was given a reasonable opportunity to respond;
 - ii) The petition satisfies the requirements of this chapter; and
 - iii) The status of marriage is the only issue adjudicated by the Court under this chapter.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter. This section is intended for clarification, not to restrict the scope of jurisdiction set forth in Section 1.02.01, Jurisdiction. The personal jurisdiction subsection adopts a rule similar to Washington State law.

[Cross-Reference: Section 21.05.02 Child Custody and Visitation – Personal Jurisdiction.]

21.04.03 Child Custody and Child Support Procedures

If there are dependent children of the marriage, the procedures set forth in chapters 21.03, Child Support, and 21.05, Child Custody shall be followed in addition to the procedures of this chapter.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.04.04 Petition for Divorce, Invalidity of Marriage or Legal Separation – Generally

A petition for divorce, invalidity of marriage or legal separation shall be prepared on a form approved by the Court Administrator. It may be filed as a separate proceeding or it may be filed in connection with:

- a) A petition for paternity establishment or disestablishment under chapter 21.02;
- b) A petition for child custody under chapter 21.05;
- c) A petition for child support under chapter 21.03;
- d) A domestic violence protection order under chapter 16.06; or
- e) A vulnerable adult protection plan under chapter 16.07.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.04.05 Petition for Divorce, Invalidity of Marriage or Legal Separation -- Who May File

Either or both parties to a marriage may file a petition for divorce, invalidity of marriage or legal separation. The guardian of a vulnerable adult spouse may file a petition for invalidity of the marriage on behalf of the vulnerable adult spouse.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

[Cross-Reference: Section 16.07.02 (f) Definition of “Vulnerable Adult”]

21.04.06 Petition for Divorce, Invalidity of Marriage or Legal Separation -- Contents

A petition for divorce, invalidity of a marriage or legal separation shall contain:

- a) The name, date and place of birth, social security number, tribal affiliation and last known address of each party;
- b) The date of and location where the marriage occurred;

- c) If the parties are separated, the date of separation, and whether there is a written separation agreement;
- d) Petitioner's recommendation for division of property and debts, on a form approved by the Court Administrator. The recommendation for division of property and debts may be filed later, as provided in section 21.04.22;
- e) A petition for divorce or legal separation shall state that the marriage is irretrievably broken. A petition for invalidity of marriage shall state briefly the reason for the request for invalidity;
- f) Whether any of the following proceedings involving the parties or the child are pending or have taken place in any court:
 - i) Child custody proceeding;
 - ii) Child support proceeding;
 - iii) A request for a domestic violence protective order or vulnerable adult protection plan; or
 - iv) A request for a restraining order involving the child or a party.
- g) A statement as to whether or not the woman is pregnant;
- h) A statement as to whether or not the respondent is in the military, or a statement that the petitioner does not know; and
- i) If there are children dependent on either spouse:
 - i) The name, date and place of birth, age, address, social security number, and tribal affiliation of all children dependent on either or both of the spouses; and
 - ii) A completed Parenting Plan, on a form approved by the Court Administrator, containing the proposed arrangements for the custody, visitation and support of the dependent children. The Parenting Plan may be filed later, as provided in section 21.05.14 (c).

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter. The Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. 501 et seq. does not, by its terms, apply to tribal courts (50 U.S.C. App. 511). A tribal court is therefore not required to appoint an attorney for a defaulting military respondent. The Court may choose to stay proceedings for absent military defendants as a matter of fairness.

[Cross-Reference: Section 21.05.14.Parenting Plan]

21.04.07 Setting the Hearing Date

When the Court receives a petition, it shall set a hearing date which shall not be more than thirty five (35) calendar days after the petition was filed, or not more than seventy five (75) calendar days if service is by publication, unless continued for good cause. The date, time and place of the hearing shall be contained in the summons.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.04.08 Purpose of Hearing

The hearing that is set at the time the divorce petition is filed will be either:

- i) A full hearing on the divorce, invalidity of marriage or legal separation if the parties have no minor children or if they agree on custody; or
- ii) A child custody preliminary hearing under section 21.05.20.

During a preliminary child custody hearing, the Court may also hear motions under this chapter for temporary orders, as provided in sections 21.04.13 – 21.04.17 and proposed agreed orders, as provided in section 21.04.19 (b).

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

[Cross-Reference: Section 21.05.20 Child Custody Preliminary Hearing]

21.04.09 Service of Petition, Summons and Notice of Hearing; Joint Petition

After a petition is filed, the petitioner shall cause the respondent to be served with a copy of the petition, summons and notice of the first hearing. The petition, summons and notice of the hearing shall be served in sufficient time before the hearing to give the respondent twenty (20) calendar days to respond, or sixty (60) calendar days when service is by publication, and then ten (10) calendar days for the petitioner to consider the response. If either party does not receive this amount of time before the hearing, a continuance may be granted upon request.

The petition, summons and notice shall be served as provided in section 21.01.11.

The parties may sign a joint petition and by doing so, waive the requirements of service of the petition and summons.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.04.10 Summons -- Content

The summons, prepared on a form approved by the Court Administrator, shall notify the respondent that if he or she does not appear or respond to the petition within twenty (20) calendar days from the date of service or within sixty (60) calendar days of the date of publication, if service is by publication, the Court may proceed without the respondent and a default judgment may be entered without his or her participation.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.04.11 Summons – Proof of Service

The person serving the summons and petition shall file with the Court certification that he or she has served the respondent, including the date and place of service. If service was made on a person other than the respondent, the certification shall state the name of the person served, the date and place of service, and the instructions given.

In case of service by certified mail, the return receipt shall be filed with the Court and shall constitute the proof of service. In case of service by publication, an affidavit signed by the person causing the notice to be published and a copy of the summons as published shall constitute the proof of service.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.04.12 Response

Unless the parties have filed a joint petition, the respondent shall file his or her response within twenty (20) calendar days after the respondent is served with a copy of the petition, or within sixty (60) calendar days if service was by publication. The response shall include a recommendation for division of property and debts on a form approved by the Court Administrator, unless the respondent chooses to file the recommendation later, as provided in section 21.04.23.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.04.13 Orders – Three Types

There are three types of orders in a divorce, invalidity of marriage or legal separation case: emergency, temporary and final.

An emergency order can be issued immediately, without notice or a hearing and it only lasts until the first hearing.

A temporary order is issued after notice and a hearing and it lasts until the final order (also called the “decree”). A temporary order can follow an

emergency order and cover the same things or a temporary order can be the only order before the final order.

Some parties may only need a final order (“decree”).

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.04.14 Emergency Orders and Temporary Orders -- Content

A party may request, by motion and affidavit, an emergency order or a temporary order during the time before the final decree. The affidavit shall be signed in front of a notary and it shall set forth the factual basis for the motion. Emergency or temporary orders may include, but are not limited to, the following provisions:

- a) Children: Custody, parenting or visitation of a dependent child, as provided in sections 21.05.16;
- b) Property or Money:
 - i) Restraining a person from transferring, encumbering, concealing or disposing of any individually or jointly owned property of the parties;
 - ii) Restraining a party from incurring debt except in the usual course of business or for the necessities of life; or
 - iii) Requiring a party to pay certain debts;
- c) Other: Emergency or temporary orders:
 - i) Restraining a party from entering the home or workplace of the other party;
 - ii) Restraining a party from going within a certain distance of the other party;
 - iii) Restraining a party from threatening or harassing the other party; or
 - iv) Any other restraint or requirement designed to protect a party or the party’s child or property from injury by the other party.

Emergency and temporary restraining orders shall contain a notice warning the party restrained that violation of the restraint provisions of the order is grounds for contempt of court and for arrest and that he or she will be arrested even if the person who obtained the order invites or allows him or her to violate the order’s prohibitions.

- d) Domestic Violence Protection Orders. These orders are issued under the procedures of Title 16.06. A party may request a domestic violence protection order in connection with a divorce, invalidity of marriage or legal separation proceeding. Domestic violence protection orders differ from restraining orders in that they are entitled to immediate enforcement off the reservation.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

[Cross-reference: Section 1.06 Contempt of Court; Section 5.04.10 Violating Restraint Provisions of a Restraining Order or Domestic Violence Protection Order]

21.04.15 Emergency Orders -- Procedure

The Court may issue an emergency order, pending a hearing on a temporary or final order, without notice to the other party if:

- a) The moving party demonstrates to the Court by written affidavit that immediate and irreparable damage, injury or loss will occur unless restrained by the Court; and
- b) The moving party provides written reasons why notice should not be required and written certification of his or her efforts, if any, to notify the other party.

A judge or judicial officer shall have authority to issue emergency orders.

The emergency order shall contain a statement of the injury, why it would be irreparable if not restrained, why the order was granted without notice, and the expiration date which shall not be later than the first hearing.

A hearing on a temporary or final order shall be scheduled within thirty-five (35) days.

The emergency order shall be served upon the other party. It may be modified, vacated, or set aside by motion of either party upon notice and opportunity for hearing.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.04.16 Temporary Orders -- Procedure

A motion for a temporary order shall be accompanied by an affidavit signed in front of a notary and setting forth the factual basis for the motion and the temporary relief requested. The motion may also be made in open court.

Notice of a hearing for the motion shall be given as provided in section 21.01.16.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.04.17 Temporary Orders – Revocation, Modification and Termination

A temporary order may be revoked or modified upon a showing of good cause and changed circumstances.

A temporary order terminates when the final decree is entered or when the petition is dismissed.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.04.18 Legal Separation

- a) Purpose. There may be circumstances when parties do not wish to divorce but need to have their separation be recognized so that they are not liable for each others' future debts and so that they do not jointly own property. These circumstances may include parties who are prohibited by their church from divorcing or victims of domestic violence who need separation while their partner gets help and who may want to reunite if the partner reforms.
- b) Procedure and Grounds. The procedure and grounds for obtaining a decree of legal separation is the same as for obtaining a decree of divorce.
- c) Effect. Legal separation terminates the parties' rights and duties as spouses except that it does not affect inheritance or life insurance, health insurance or other status-related benefits.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.04.19 Divorce, Invalidity of Marriage or Legal Separation Hearing - Conduct

- a) Closed Hearings. Only those persons the Court finds to have a legitimate interest in the proceedings may attend hearings under this chapter.
- b) Joint Petitions and Proposed Agreed Orders. The parties to proceedings under this chapter may file a joint petition or agree to a proposed order that resolves some or all of the issues of the case. Before approving any joint petition or agreed order, the Court shall review it to determine that:
 - i) No party's consent to the proposed order is the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person; and
 - ii) No aspect of the agreement is likely to put a victim of domestic violence at increased risk.

The judge may hold an in-chambers, ex-parte discussion with any party.

If the Court finds that consent was not truly voluntary the joint petition or agreed order shall not be entered and the case shall proceed to a full hearing.

If the joint petition or proposed agreed order resolves all the issues before the Court, the Court may enter the proposed agreed order as the final order without a full hearing.

- c) Referral to Counseling. If one party denies that the marriage is irretrievably broken or on the Court's own motion if reconciliation appears to be possible, the Court may refer the parties to counseling and continue the case for a reasonable time established by the Court. Spouses with a history of domestic violence shall not be sent to reconciliation counseling.
- d) If there is not a joint petition or agreed order, the Court shall review the documents filed in the case, hear the testimony of each party, and consider any other evidence presented.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

[Cross-Reference: Section 21.03.20 (a) Child Support Hearing Conduct – Who May Attend]

21.04.20 Divorce and Legal Separation -- Grounds

The only basis for divorce is that the marriage is irretrievably broken. Other reasons shall not be considered relevant by the Court.

The Court shall enter a decree of divorce or legal separation if:

- a) The Court has considered and made provision for the parenting and support of any dependent child of the marriage, and the division of property and debts; and
- b) The Court finds that the marriage is irretrievably broken.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]:

21.04.21 Invalidity of Marriage -- Grounds

The Court shall enter a declaration of invalidity of the marriage as of the date it took place if:

- a) The Court has considered and made provision for the parenting and support of any dependent child of the marriage, and the division of property and debts; and

- b) One of the following circumstances holds true:
 - i) One party lacked capacity to consent to the marriage and that party is the one petitioning for invalidity;
 - ii) There is a prior undissolved marriage of one of the parties;
 - iii) One party entered the marriage because of force, duress or fraud and that party is the one petitioning for invalidity; or
 - iv) The marriage was void in the jurisdiction where it took place.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.04.22 Disposition of Property and Debts

A party must file his or her recommended division of property and debts and cause it to be served on the other party within ten (10) calendar days before the hearing unless it has been filed with the petition or response.

If there are children of the marriage, property and debts shall be divided with the children's well-being as the primary objective.

If the parties have agreed to the division of property and debts, the agreement shall be reviewed according to the Proposed Agreed Order provisions of section 21.04.19 (b).

If the parties have not agreed to the division of property and debts, the Court may order the parties to attempt to reach agreement, except in cases where the parties have a history of domestic violence. In the absence of agreement by the parties, the Court shall divide the parties' property and debts. In making the division, the Court shall be guided by the following factors:

- a) Property shall be divided with the minor children's well-being as the first and foremost consideration;
- b) Property and debts acquired during the marriage belong equally to the spouses unless the spouses have agreed that certain property or debts are separate. The Court may be guided by, but is not bound by, the principles of community property law;
- c) Neither inherited property nor property held in trust by the U.S. for the individual is subject to property division by the Court;
- d) If a party owns or is purchasing a home on land assigned on the Port Gamble S'Klallam Reservation, a copy of the purchase or ownership agreement and a copy of the lot assignment certificate shall be submitted to the Court before the final division of property.

Lot assignment, ownership and occupancy are three different issues. Lot assignment and lot occupancy are within the exclusive authority of the Tribal Council. Decisions regarding home ownership may be within the jurisdiction of the Court if the home can be separated from the lot.

The Court may stay the proceedings under this chapter while the Tribal Council makes a decision regarding lot assignment and/or occupancy so that the Court can take the Tribal Council's decision into account in dividing the rest of the couple's property and debts.

- e) In cases where the parties have a history of domestic violence common ownership of property should be avoided and the Court may use property division to help promote the independence of the abused spouse.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

[Cross-Reference: Sections 10.01.20 – 10.01.24 Disposition of Assignment on Divorce]

21.04.23 Division of Debts – Notice to Parties

Before the final division of debts, the Court shall notify the parties of the following:

“Even if the Court assigns a debt to your spouse, credit collectors can still attempt to collect from you. For example, if the Court assigns to your spouse the repayment of a credit card bill and the credit card was in your name or in your name and your spouse's name, jointly, the credit card company will still hold you responsible for the debt if your spouse does not pay the bill. Each of you should notify all your creditors in writing that you are separated or divorced and will not be liable for the future debts of your ex-spouse.”

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.04.24 Default Decree of Divorce, Invalidity of Marriage or Legal Separation

When the respondent fails to appear or otherwise defend, the petitioner may request a default divorce, invalidity of marriage or legal separation decree. The Court may enter a default decree of divorce, invalidity of marriage, or legal separation, including the provisions of the proposed division of property and debts, upon finding the following:

- a) The Court has jurisdiction over the subject matter of the case;
- b) The respondent was given proper service of the petition and summons and proper notice of the hearing; and
- c) The petition satisfies the requirements of this chapter.

Notice of the default decree shall be served on the respondent.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.04.25 Divorce, Invalidation of Marriage or Legal Separation – Findings of Fact, Conclusions of Law and Order on Property and Debts

After the hearing or upon approval of a joint petition or agreed order, the Court shall enter two court orders: 1.) “findings of fact, conclusions of law and order on property and debts” and 2.) a separate “decree” of divorce, invalidity of marriage or legal separation. The findings of fact and conclusions of law shall include:

- a) The basis for the Court’s jurisdiction over the case;
- b) The address of each party;
- c) The date the marriage occurred;
- d) A statement indicating when the petition was filed and when and how the respondent was served;
- e) A statement as to whether or not the respondent is in the military;
- f) A statement as to whether or not the woman is pregnant;
- g) A statement as to whether the parties entered into a written separation agreement, the date of any agreement and a finding as to whether the agreement was fair or unfair;
- h) A statement that the marriage of the parties is irretrievably broken; or the basis for the invalidity of the marriage; and
- i) A statement regarding any name change that is applicable;

The order on property and debt shall include:

- j) A statement describing any property that should be awarded to each party, free from claim of interest of the other party; and
- k) A statement describing any debts that should be paid by each party.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.04.26 Decree of Divorce, Invalidation of Marriage or Legal Separation -- Contents

The decree of divorce, invalidity of marriage or legal separation shall include:

- a) A statement that the Court has jurisdiction over the case;

- b) The date the marriage occurred;
- c) Any name change that is applicable;
- d) A statement that the marriage is dissolved or invalidated or that the parties are legally separated; and
- e) A statement that property and debts shall be divided as provided in the order on property and debts.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.04.27 Invalidation of Marriage Decree -- Effect

A declaration that a marriage was invalid does not affect the parent-child relationship.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]:

21.04.28 Decree of Divorce, Invalidation of Marriage or Legal Separation -- Finality

The decree shall be final for purposes of appeal under Title 7.03.01.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.04.29 Legal Separation Decree – Vacating or Converting to Divorce Decree

If the parties with a legal separation decree reconcile, they may request, by written affidavit, that the legal separation decree be vacated (terminated). Upon motion by both parties, the Court shall vacate the legal separation decree.

Six months after entry of a legal separation decree, one party may request, by written affidavit, that the decree be converted to a divorce decree. Upon motion by a party, the Court shall convert the legal separation decree to a divorce decree.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.04.30 Modification of Divorce, Invalidation of Marriage or Legal Separation Decree

Divisions of property and debt are final and may not be modified.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

[Cross-Reference: Sections 21.03.43 – 45 Modification of Child Support Orders; Sections 21.05.35 - 36 Modification of Child Custody or Visitation Orders, Including Parenting Plans]

Chapter 21.05 Child Custody and Visitation

21.05.01 Purpose

“Every child should have a happy growing-up life.” (S’Klallam Elder.)

This chapter provides a process for determining certain issues regarding children when the children’s parents do not live together. These issues include: where the children will live, how they will maintain significant contacts with their parents, siblings, grandparents, other extended family members and the Port Gamble S’Klallam community, and how decisions about their upbringing will be made.

It is Port Gamble S’Klallam policy that the child is the central focus of attention and protection in determining custody and visitation matters.

It is also Port Gamble S’Klallam policy that S’Klallam children should have an opportunity to learn about and participate in the S’Klallam Way. This includes access to S’Klallam family, participation in S’Klallam events and an opportunity to exercise S’Klallam treaty rights.

It is the intent of this chapter to encourage parents to meet their parental responsibilities through agreements, where appropriate, rather than relying on judicial intervention.

This chapter may be used as a guide during guardianship proceedings under chapter 16.03 when a child’s guardians or non-parent custodians separate or divorce. The Parenting Plan may be used in ICW proceedings when there is also an issue of custody and visitation due to parental separation or divorce, or when non-married parents are not living together.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]T:

21.05.02 Personal Jurisdiction

Personal jurisdiction over a non-custodial parent is not needed for a determination of child custody or visitation as long as the person has been given notice according to Title 21.01.16, and a reasonable opportunity to be heard.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]Under the Uniform Child Custody Jurisdiction Act a court may adjudicate custody without acquiring personal jurisdiction over an absent party given reasonable attempts to furnish notice of proceedings, since custody is an adjudication of the child’s status. While Pt. Gamble S’Klallam law does not include this Act, it adopts a similar personal jurisdiction rule. This section is intended for clarification, not to restrict the scope of jurisdiction set forth in Section 1.02.01, Jurisdiction.]

21.05.03 Ward of the Court

In a proceeding under this chapter, the child shall be a ward of the Port Gamble S'Klallam Court if:

- a) One of the parties has a significant connection with a state other than Washington; and
- b) The child is:
 - i) an enrolled Port Gamble S'Klallam member, or
 - ii) the child of an enrolled Port Gamble S'Klallam member and not enrolled in another tribe.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]:

21.05.04 Petition for Child Custody – Generally

A petition for determination of child custody shall be prepared on a form approved by the Court Administrator. It may be filed as a separate proceeding or it may be filed in connection with:

- a) A petition for Divorce, Invalidity of Marriage or Legal Separation under chapter 21.04;
- b) A petition for paternity establishment or disestablishment under chapter 21.02;
- c) A petition for child support under chapter 21.03;
- d) A domestic violence protection order under chapter 16.06; or
- e) A vulnerable adult protection plan under chapter 16.07.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]:

21.05.05 Petition for Child Custody -- Who May File

A petition for determination of child custody may be filed by a parent of the child.

When guardians or non-parent custodians of a child separate or divorce, chapter 16.03, Guardianship should be used to determine custody and visitation issues. The present chapter may serve as a guide in those proceedings.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.05.06 Petition for Child Custody -- Contents

A petition for child custody shall contain:

- a) The name, age, address, tribal affiliation, date and place of birth, and social security number of the parties and every dependent child of the marriage or relationship;
- b) Whether the mother and father are or were married, and the dates of marriage, separation and divorce, if any;
- c) A completed Parenting Plan, on a form approved by the Court Administrator. The Parenting Plan may be filed later, as provided in section 21.05.14 (c);
- d) Whether any of the following proceedings involving the parties or the child are pending or have taken place in any court and, if so, a copy of any orders from the proceedings:
 - i) Child custody proceeding;
 - ii) Child support proceeding;
 - iii) A request for a domestic violence protective order or no-contact order;
 - iv) A request for a restraining order involving the child or a party;
or
 - v) Indian Child Welfare proceeding.
- e) A copy of the child's birth certificate shall be attached to the petition or provided to the Court at least ten (10) days before the first hearing.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.05.07 Notice to ICW; Dismissal of Custody Petition

After a child custody petition is filed, the Court shall notify the Port Gamble S'Klallam Indian Child Welfare Program of the names of the parties and child involved in the case. The Indian Child Welfare Program shall determine whether the child is the subject of a proceeding under chapter 16.02, Child in Need of Care, or an Indian Child Welfare proceeding in any other court.

If the child is the subject of an Indian Child Welfare proceeding, the Court may dismiss the custody case or it may retain jurisdiction over the case and continue it pending the ICW proceedings under chapter 16.02. In an ICW proceeding which also involves custody following separation or

divorce, the Court may be guided by the provisions of this chapter, including the requirement of a Parenting Plan.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.05.08 Setting the Preliminary Hearing Date

When the Court receives a petition, it shall set a preliminary hearing date which shall not be more than thirty five (35) calendar days after the petition was received, or not more than seventy-five (75) calendar days if service is by publication, unless continued for good cause. The date, time and place of the preliminary hearing shall be contained in the summons.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.05.09 Service of Child Custody Petition, Summons and Notice of Hearing; Joint Petition

After a petition is filed, the petitioner shall cause the respondent to be served with a copy of the petition, summons and notice of the first hearing. The petition, summons and notice of the hearing shall be served in sufficient time before the hearing to give the respondent twenty (20) calendar days to respond, or sixty (60) calendar days when service is by publication, and then ten (10) calendar days for the petitioner to consider the response. If either party does not receive this amount of time before the hearing, a continuance may be granted, upon request.

The petition, summons and notice shall be served as provided in section 21.01.10.

The parties may sign a joint petition and by doing so, waive the requirements of service of the petition and summons.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.05.10 Summons -- Content

The summons, prepared on a form approved by the Court Administrator, shall notify the respondent that if he or she does not appear or respond to the petition within twenty (20) calendar days from the date of service or within sixty (60) calendar days of the date of publication, if service is by publication, the Court may proceed without the respondent and a default judgment may be entered without his or her participation.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.05.11 Summons – Proof of Service

The person serving the summons and petition shall file with the Court certification that he or she has served the respondent, including the date and place of service. If service was made on a person other than the

respondent, the certification shall state the name of the person served, the date and place of service, and the instructions given.

In case of service by certified mail, the return receipt shall be filed with the Court and shall constitute the proof of service. In case of service by publication, an affidavit by the person causing the notice to be published and a copy of the summons as published shall constitute the proof of service.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.05.12 Response – Parenting Plan

Unless the parties have filed a joint petition, the respondent shall file his or her response within twenty (20) calendar days after the respondent is served with a copy of the petition, or within sixty (60) calendar days if service was by publication. The response shall include a completed Parenting Plan, on a form approved by the Court Administrator, unless the respondent chooses to file the Parenting Plan later, as provided in section 21.05.14 (c).

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.05.13 Response – Paternity at Issue

If the respondent disagrees or is unsure that the male party is the father of the child, he or she shall state this fact in the response.

Upon the request of either party, the Court shall continue the child custody proceeding pending establishment of paternity, as provided in chapter 21.02.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.05.14 Parenting Plan

- a) Contents. A proposed Parenting Plan shall contain provisions for the following:
 - i) Residential provisions which designate where the child will live and what contact they will have with each parent; a schedule for the child's residence on given days of the year, including provision for holidays, birthdays of family members, vacations, and other special occasions; and provision for transportation of the child between parents;
 - ii) Child support provisions as set forth in section 21.03.23, governed by the procedures of chapter 21.03;

- iii) Which parent shall have decision-making authority regarding the child’s education, health-care, spiritual and cultural upbringing, and other areas;
 - iv) Contact with grandparents or extended family members, unless restrictions to protect the child are required, as provided in section 21.05.27;
 - v) Contact with the Port Gamble S’Klallam tribal community, including participation in cultural events; and
 - vi) Designation as to which parent will claim the child as dependent(s) for tax purposes.
- b) Agreed Parenting Plan. Parties may agree to all or part of a proposed Parenting Plan.
 - c) Filing and Service. A party must file his or her Parenting Plan and cause it to be served on the other party within ten (10) calendar days before the hearing unless it has been filed with the petition or response.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.05.15 Custody Orders – Three Types

There are three types of orders in a custody case: emergency, temporary and final.

An emergency order can be issued immediately, without notice or a hearing and it only lasts until the first hearing.

A temporary order is issued after notice and a hearing and it lasts until the final order (also called the “decree”). A temporary order can follow an emergency order and cover the same things or a temporary order can be the only order before the final order.

Some parties may only need a final order (“decree”).

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.05.16 Emergency Orders and Temporary Orders -- Content

A party may request, by motion and affidavit, an emergency order or a temporary order during the time before the final custody decree. The affidavit shall be signed in front of a notary and it shall set forth the factual basis for the motion. Emergency or temporary orders may include, but are not limited to, the following:

- a) Temporary Parenting Plan. A temporary Parenting Plan shall include temporary residential arrangements and temporary decision-making authority.
- b) Emergency or Temporary Restraining Orders. These orders may restrain a party from
 - i) Entering the home or workplace of the other party or the school or day care of the child;
 - ii) Going within a certain distance of the other party or the child;
 - iii) Threatening or harassing the other party or the child; or
 - iv) Removing the child or causing the child to be removed from a particular geographic area.

Emergency and temporary restraining orders shall contain a notice warning the party restrained that violation of the restraint provisions of the order is grounds for contempt of court and for arrest and that he or she will be arrested even if the person who obtained the order invites or allows him or her to violate the order's prohibitions.

- c) Domestic Violence Protection Orders. These orders are issued under the procedures of Title 16.06. A party may request a Domestic Violence Protection Order in connection with a child custody proceeding. Domestic violence protection orders differ from restraining orders in that they are entitled to immediate enforcement off the reservation.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

[Cross-reference: Section 16,06.10, Domestic Violence Protection Order; section 1.06, Contempt of Court; section 5.04.10, Violating Restraint Provisions of a Restraining Order or Domestic Violence Protection Order.]

21.05.17 Emergency Orders -- Procedure

The Court may issue an emergency order, pending a hearing on a temporary or final order, without notice to the other party if:

- a) The moving party demonstrates to the Court by written affidavit that immediate and irreparable damage, injury or loss will occur unless restrained by the Court; and
- b) The moving party provides written reasons why notice should not be required and written certification of his or her efforts, if any, to notify the other party.

A judge or judicial officer shall have authority to issue emergency orders.

The emergency order shall contain a statement of the injury, why it would be irreparable if not restrained, why the order was granted without notice, and the expiration date which shall not be later than the first hearing.

A hearing on a temporary or final order shall be scheduled within thirty-five (35) days.

The emergency order shall be served upon the other party. It may be modified, vacated, or set aside by motion of either party upon notice and opportunity for hearing.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.05.18 Temporary Orders -- Procedure

A motion for a temporary order shall be accompanied by an affidavit signed in front of a notary and setting forth the factual basis for the motion and the temporary relief requested. The motion may also be made in open court.

Notice of a hearing for the motion shall be given as provided in section 21.01.16.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.05.19 Temporary Orders – Revocation, Modification and Termination

A temporary order may be revoked or modified upon a showing of good cause and changed circumstances.

A temporary order terminates when the final decree is entered or when the petition is dismissed.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.05.20 Preliminary Hearing

- a) Purpose. The purpose of the preliminary hearing is to determine whether a custody report is needed, whether temporary orders for the protection of the child and/or the family are needed pending further proceedings, and to review any proposed agreed orders.
- b) Custody Report. The Court may order an investigation and report concerning parenting arrangements for the child, as provided in section 21.05.22. If a party testifies that there are questions about the safety of the child in the custody of another party, the Court shall order an investigation and report.
- c) Temporary Orders. The Court may issue temporary restraining orders as provided in sections 21.05.15 – 21.05.19, temporary custody

and/or visitation orders, temporary Parenting Plans, or domestic violence protection orders.

- d) Attempt to Reach Agreement. If the parties have not agreed on custody or other issues in the Parenting Plan, the Court may order the parties to attempt to reach their own agreement, except in cases where the parties have a history of domestic violence.
- e) Proposed Agreed Orders. The parties to proceedings under this chapter may agree to a proposed order that resolves some or all of the issues of the case. Before approving any agreed order, the Court shall review it to determine that:
 - i) The agreement appears to give the child all the benefits both parties have to offer, considering the factors set forth in section 21.05.26;
 - ii) No party's consent to the proposed order is the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person; and
 - iii) No aspect of the agreement is likely to put a victim of domestic violence at increased risk.

The judge may hold an in-chambers, ex-parte discussion with any party or with the child, if it appears to the judge that the child is old enough to share his or her views. In no case shall the child be made to feel that he or she is responsible for the decision on custody.

If the Court finds that consent was not truly voluntary or that the agreement does not give the child all the benefits both parties have to offer, the agreed order shall not be entered and the case shall proceed to the custody hearing.

- f) If the proposed agreed order resolves all of the issues before the Court and no custody report is warranted, the Court may enter the proposed agreed order as the final order without proceeding to the custody hearing.

[HIST: The phrase "all the benefits both parties have to offer" has been chosen to take the place of the standard phrase "best interests of the child." This is due to the fact that "best interests of the child" has historically been used against Indian children.]

21.05.21 Scheduling Custody Hearing at Preliminary Hearing

At the conclusion of the preliminary hearing, the Court shall set a time and date for the custody hearing. Notice of the custody hearing shall be provided to any party who was not present at the preliminary hearing.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.05.22 Custody Report – Preparation, Contents, and Requirements

- a) Who Prepares Report. The custody report shall be prepared by a guardian ad litem who is qualified to prepare such a report and is approved for this purpose by the Port Gamble S'Klallam Court.
- b) Contents. The agency or individual preparing the custody report shall conduct a complete home study and shall consult with the child's parents and health, education, and social service personnel who have had prior professional contacts with the child. The purpose of the inquiry is to determine what custody arrangements would give the child all the benefits both parties have to offer. A check of the criminal records, if any, of the parents shall be requested from state and tribal law enforcement authorities. Evidence of alcohol and drug abuse, if any, shall be described. The report shall be in writing and contain the professional opinions of all persons consulted.
- c) Guardian ad Litem Qualifications. A guardian ad litem shall be an adult who is currently certified as a guardian ad litem, is in good standing with the Court, has never been convicted of a felony, and has never been convicted of any crime against a child. Preference shall be given to enrolled Tribal members. No person who is an interested party in a proceeding, who appears as counsel in the proceeding on behalf of any party, or who is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding. A guardian ad litem may be recognized as certified by the Court if he or she:
 - i) Has completed guardian ad litem training provided by a tribe or by a state, or
 - ii) Is recognized as a certified guardian ad litem by another jurisdiction.
- d) Guardian ad Litem Responsibilities. The guardian ad litem has none of the rights or duties of a general guardian. The guardian ad litem shall:
 - i) Be an advocate for the child in determining what custody arrangements would give the child all the benefits both parties have to offer,
 - ii) Consider, but shall not be bound by, the wishes of the child or the positions of others as to what custody arrangements would give the child all the benefits both parties have to offer,
 - iii) Investigate the issues and provide a written report to the Court, and

- iv) Communicate to the Court the wishes of the child, unless the child asks the guardian ad litem to do otherwise.
- e) Compensation. The guardian ad litem shall be compensated at a rate that the Court determines is reasonable, to be paid by the parties. The Court may apportion the amount that each party shall pay based on the parties' ability to pay or the Court may assess the cost equally between the parties.
- f) Waiver of Confidentiality. The guardian ad litem is authorized to obtain records related to the child and required for the custody report even if those records are otherwise confidential.

[HIST: The phrase "all the benefits both parties have to offer" has been chosen to take the place of the standard phrase "best interests of the child." This is due to the fact that "best interests of the child" has historically been used against Indian children. Resolution 14-A-124, passed 9/22/14, amended this section to remove the responsibility of custody reports from the Indian Child Welfare Program and place that responsibility with a qualified guardian ad litem.]

21.05.23 Custody Report - Filing

The custody report shall be filed with the Court at least ten (10) calendar days before the custody hearing. The Court Administrator shall provide copies of the report to all parties at least five (5) calendar days before the custody hearing.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.05.24 Custody Report – Child in Need of Care

If a custody report finds that the child is a "child in need of care," according to chapter 16.02.02, the Indian Child Welfare Program shall file a case under Title 16 of the Port Gamble S'Klallam Law and Order Code. After the ICW case is filed, the Court may dismiss the custody case or it may retain jurisdiction over the case and continue it pending the ICW proceedings under chapter 16.02. In an ICW proceeding which also involves custody following separation or divorce, the Court may be guided by the provisions of this chapter, including the requirement of a Parenting Plan.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.05.25 Custody Hearing - Conduct

- a) Closed Hearings. Only those persons the Court finds to have a legitimate interest in the proceedings may attend hearings under this chapter.
- b) The Court shall consider the custody report, if any, the proposed Parenting Plan(s), and it shall hear testimony, if necessary or

requested by a party, to determine if a proposed Parenting Plan gives the child all the benefits both parties have to offer .

- c) The judge may speak with the child alone in chambers if it appears to the judge that the child is old enough to share his or her views. In no case shall the child be made to feel that he or she is responsible for the decision on custody.

[HIST: Cross Reference: Section 21.03.20 a, Child Support Hearing Conduct – Who May Attend]

21.05.26 Custody Hearing – Child-Centered Standard and Relevant Factors

It is Port Gamble S’Klallam policy and law that considerations of custody and visitation are completely child-centered in order to give a child all the benefits that each party has to offer.

In determining if the provisions in a Parenting Plan give a child all the benefits each party has to offer, the Court shall be guided by the following factors:

- a) The emotional needs and developmental level of the child;
- b) Whether one party is more responsible and effective in caring for the child and whether the child is more bonded with one party or the other;
- c) Residential provisions should encourage each parent to maintain a loving, stable, and nurturing relationship with the child. Significant contact with both parents is important to the child’s well-being, unless there is good cause to restrict contact, as provided in section 21.05.27;
- d) Significant contact with siblings is important to the child’s well-being, unless there is good cause to restrict contact, as provided in section 21.05.27;
- e) Significant contact with extended family is important to the child’s well-being, unless there is good cause to restrict contact, as provided in section 21.05.27;
- f) Significant contact with the child’s tribal community and culture is important to the child’s well-being;
- g) Excessive conflict between parents is detrimental to the child and plans should minimize opportunities for conflict, to the extent possible; and

- h) In cases where the parties have a history of domestic violence, the Court shall fashion orders that protect the safety of the parties and the child.

[HIST: The phrase “all the benefits both parties have to offer” has been chosen to take the place of the standard phrase “best interests of the child.” This is due to the fact that “best interests of the child” has historically been used against Indian children.]

21.05.27 Restrictions to Protect Child

If the Court finds that a party or a person who the party lives with or associates with in the presence of the child poses a risk of harm to the child, the Court shall fashion a plan that will protect the child. This may include requiring supervised visitation.

The Parenting Plan shall protect the child while allowing the child to receive whatever benefits the party has to offer. This may include having contact with the party’s extended family or simply establishing some way for the child to know that the party loves the child.

[HIST: The phrase “all the benefits both parties have to offer” has been chosen to take the place of the standard phrase “best interests of the child.” This is due to the fact that “best interests of the child” has historically been used against Indian children.]

21.05.28 Default Custody Order

When the respondent fails to appear or otherwise defend, the petitioner may request a default custody order. The Court may enter a default custody order, including the provisions of the proposed Parenting Plan, upon finding the following:

- a) The Court has jurisdiction over the subject matter of the case;
- b) The respondent was given proper service of the petition and summons and proper notice of the hearing; and
- c) The proposed Parenting Plan is child-centered to give the child all the benefits both parties have to offer.

Notice of the default decree shall be served on the respondent.

[HIST: The phrase “all the benefits both parties have to offer” has been chosen to take the place of the standard phrase “best interests of the child.” This is due to the fact that “best interests of the child” has historically been used against Indian children.]

21.05.29 Visitation by Grandparents and Other Extended Family

Generally, grandparents and extended family members will have contact with the child during the time the child is in the physical custody of the parent to whom the grandparents or others are related. This section

applies when the normal arrangement is not possible, such as in the case of the death or restricted visitation of the related parent.

- a) Who May File Petition: A child's grandparent or other member of the child's extended family may petition the Court for visitation or may intervene in a custody proceeding to request visitation;
- b) Petition – Contents: The petition for visitation shall contain the same information as a petition for child custody except that no Parenting Plan is required. In addition, the petition shall contain:
 - i) A statement describing how the petitioner is related to the child;
 - ii) A statement describing the child's current residential arrangements; and
 - iii) The proposed visitation schedule.
- c) Visitation Report. The Court may order a report on visitation according to the procedure set forth in sections 21.05.20 (b) and 21.05.22 - .24 for custody reports.
- d) Visitation Hearing. In determining whether to grant visitation and, if granted, the nature and extent of the visitation, the Court shall be guided by the following factors:
 - i) The emotional needs and development level of the child;
 - ii) Whether the petitioner will be responsible and effective in caring for the child;
 - iii) Whether the visitation will contribute to significant contact with siblings which is beneficial to the child, unless there is good cause to restrict contact, as provided in section 21.05.27;
 - iv) Whether the visitation will contribute to significant contact with the child's tribal community and culture;
 - v) Excessive conflict between the parties is detrimental to the child. Visitation plans should minimize such conflict; and
 - vi) If the Court finds that the petitioner or a person who the petitioner lives with or would associate with in the presence of the child poses a risk of harm to the child, the Court shall either deny the visitation or fashion a visitation plan that will protect the child.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.05.30 Non-payment of Child Support – Effect on Custody

If a party fails to comply with a provision of a Parenting Plan or a child support order, the other party's obligations under the Parenting Plan or the child support order are not affected. This means you cannot withhold visitation if the other party does not pay child support.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.05.31 Failure to Comply

- a) Failure to comply with a provision in a Parenting Plan or a child support order constitutes contempt of court, as provided in chapter 1.06.
- b) Failure to comply with orders restraining threats or acts of violence or orders restraining entering a home, school or workplace constitutes contempt of court and it is also a criminal offense.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

[Cross-reference: Section 16.06.12, Domestic Violence Protection Order; section 1.06, Contempt of Court; section 5.04.10, Violating Restraint Provisions of a Restraining Order or Domestic Violence Protection Order].

21.05.32 Child Custody Findings of Fact and Conclusions of Law

After the hearing or upon approval of an agreed order, the Court shall enter two court orders: 1) findings of fact and conclusions of law and 2) a separate final custody order. The findings and conclusions shall include:

- a) The basis for the Court's jurisdiction over the case;
- b) The current addresses of the parties;
- c) The names, birthdates, ages, addresses and tribal affiliations of the children dependent on the parties; and
- d) Specific descriptions of any restrictions required by section 21.05.27 and the reasons for those restrictions or the reasons for any other order necessary for the protection of the child, including domestic violence protective orders or continued supervision by the Indian Child Welfare Program.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]:

21.05.33 Child Custody Final Order – Contents

The Court shall have broad discretion to fashion a final custody order that will provide the best care for the child.

The custody final order shall include:

- a) A statement that the Court has jurisdiction over the case;
- b) A statement that the child shall reside with and visit the parties in accordance with the Parenting Plan which is attached to and incorporated in the final order and that the parties shall allocate decision making and resolve any disputes in accordance with that Parenting Plan;
- c) A statement that both parties are entitled to receive and have access to the child's health and education records, unless there has been a showing of good cause to limit access as provided in section 21.05.27 and a statement as to which party shall notify the child's school and health care provider that he or she is the "second household" for purposes of receiving records;
- d) A statement as to which party is awarded the federal tax exemption(s) for the dependent child(ren) or a statement of any arrangements to alternate the exemption;
- e) A statement that each person entitled to custody or visitation has a continuing obligation to notify the Court of any change of address;
- f) A statement that the person with whom the child resides the majority of the time must request a modification of the Parenting Plan if that person intends to relocate outside the child's current school district. A modification must be approved before the person may relocate the child;
- g) A statement that the Court shall have continuing, exclusive jurisdiction over the custody and welfare of the child; and
- h) Any other order necessary for the protection and well being of the child, including domestic violence protective orders or continued supervision by the Indian Child Welfare Program.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

[Cross-reference: Section 21.01.05, Continuing Exclusive Jurisdiction.]

21.05.34 Child Custody Final Order -- Finality

The final order shall be final for purposes of appeal under Title 7.03.01.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.05.35 Modification of Custody or Visitation Orders, Including Parenting Plan

- a) The Port Gamble S’Klallam Community Court shall have continuing, exclusive jurisdiction to modify its own child custody or visitation orders;
- b) A party may request, by motion supported by affidavit, modification of a custody or visitation order, including the provisions of the Parenting Plan. The affidavit shall be signed in front of a notary and shall state how circumstances have changed, why the custody or visitation order should be changed, and how the change benefits the child. The Court may consider a modification motion during a child support review hearing, as provided in section 21.03.41;
- c) The Court may grant modification of a custody or visitation order upon proof by the moving party that:
 - i) There has been a significant change of circumstances related to custody of the child since the original order; and
 - ii) The modification benefits the child consistent with section 21.05.26.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter.]

21.05.36 Modification of Custody Order Issued by Another State or Tribe

A custody order issued by another state or tribe shall not be modified unless:

- a) The issuing court no longer has jurisdiction over the case or it declines to exercise jurisdiction to modify the custody order; or
- b) The Port Gamble S’Klallam reservation is the “domicile” of the child or one of the parties and the Port Gamble Community Court is the forum with the most significant connections with the child.

[HIST: Source - Resolution No. 04 A 034, passed 3/9/04, adopted this chapter. This section on modification presumes there is a valid court order issued by another state or tribe. To determine whether a court order may be granted recognition by the Port Gamble S’Klallam Community Court, see section 21.01.19. Cross-reference: Section 21.01.02 (f), Definitions - “Domicile,”; 28 U.S.C. 1738A, “Full faith and credit given to child custody determinations” does not include Indian tribes in its definition of “states.”]