

TITLE 2 - RULES OF PROCEDURE

CODE 2-15 JUVENILES – PURPOSE AND CONSTRUCTION

2-15-1 Purpose and Construction

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

2-15-2 Definitions

(a) "Adult"

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

(b) "Child"

An individual who is less than eighteen (18) years old and has not been emancipated.

(c) "Child in Need of Supervision" - means a child who:

- (1) Being subject to compulsory school attendance, is habitually absent from school; or
- (2) Habitually disobeys the reasonable and lawful demands of his or her parents, guardian or custodian and is beyond such control; or
- (3) Has committed an offense applicable only to children; and
- (4) In any of the above situations is in need of care, cultural education, or rehabilitation.

(d) "Custodian"

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

(e) "Dependent Child"

A child is considered dependent if:

(1) the child is beyond the control of the parents or custodian, and the child's behavior is such as to endanger the welfare of himself or herself due to a mental health condition; or

(2) the child's condition or circumstances are such as to endanger the welfare of the child or of others, including but not limited to;

(A) any case where a parent or custodian is incapable of meeting his/her duties due to death, incarceration, hospitalization or other physical or mental incapacity without planning for the care and custody of the child; or

(B) any case where a child has been placed for care or adoption in violation of federal, state or tribal law; or

(C) any case where a child is neglected or abused as those terms are defined in this chapter; or

(D) any case where a child is abandoned

(f) "Detention"

The placement of a child in a physically restrictive facility

(g) "Guardian"

A person other than the child's parent who is by law responsible for that child.

(h) "Juvenile Court"

The Tribes' Tribal Court when exercising jurisdiction under this Code.

(i) "Juvenile Court Judge"

Any judge of the Tribes' Tribal Court when exercising jurisdiction under this Code.

(j) "Juvenile Offender"

A person who commits a juvenile offense prior to his eighteenth (18th) birthday.

(k) "Juvenile Offense"

An act, which, if committed by an adult, is designated a violation under the Tribes' Violations Code; or an act which, if committed by an adult would be considered a crime under state or federal law.

(l) “Least Restrictive Alternative”

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

(m) “Minor”

A “child” as defined in section 2-15-2(c).

(n) “Shelter Care”

Extended family member placement or foster care placement licensed or approved by an applicable agency.

(o) “Tape”

The record of a court proceeding, whether digital or analog, and whether stored on magnetic tape, computer disk, memory stick or any other electronic storage device, shall be referred to as a “tape”.

2-15-3 The Court System

(a) Establishment

There is hereby established for the Tribes a Court to be known as the Confederated Tribes of Coos Lower Umpqua and Siuslaw Indians Juvenile Court.

(b) Judges

The Tribes’ Juvenile Court shall consist of judges who shall be appointed by the Chief Judge from among all the judges of the Tribal Court.

(c) Powers and Duties

The Juvenile Court shall be vested with all of the powers of the Tribal Court in law and equity. However, no adjudication upon the status of any child in the jurisdiction of the Juvenile Court shall be deemed criminal or be deemed a conviction of crime, unless the Juvenile Court refers the matter to the adult Tribal Court, when established. Therefore, the disposition of a child or of evidence given shall not be admissible as evidence against the child in any proceedings in another court.

(d) Authority of Court

The Juvenile Court is authorized to cooperate fully with any federal, state, tribal, public or private agency to participate in any diversion, rehabilitation or training programs and

to receive grants-in-aid to carry out the purposes of this Code.

(e) Juvenile Court Scheduling

The Clerk of the Court shall keep a juvenile calendar upon which all juvenile cases shall be entered. The Juvenile Court shall act as soon as possible on any Petition or other filing involving an emergency.

(f) Computation of Time

Whenever time limitations are expressed in days under Tribal law, the day of service and Saturdays, Sundays and Tribal legal holidays are excluded from the computation. If a time for answer falls on a Saturday, Sunday or Tribal legal holiday, the time is extended to the next succeeding weekday. No additional time is allowed for delivery by mail or otherwise except by permission of the Judge.

(g) Tribal Officer

Any tribal police or law enforcement officer may carry out the duties of "officer" under this Code. An officer may be present at Juvenile Court proceedings at the discretion of the Juvenile Court Judge.

(h) Guardian Ad Litem

The Juvenile Court, under the proceeding authorized by this Code shall appoint, for the purposes of that proceeding, a guardian ad litem for a child where the Court finds that the minor does not have a natural or adoptive parent, guardian or custodian willing and able to provide effective assistance in understanding and participating in the proceedings of the Juvenile Court respecting the child. For purposes of Juvenile Court proceedings, the role of Guardian ad litem shall be filled by a Tribal Court Advocate, as defined in Section 1-1-64

(j) Juvenile Recording Tape Retention

(1) All proceedings before the Juvenile Court shall be electronically recorded by a digital or analog recording device. Tapes used in the recording of juvenile matters shall be retained by the Tribes' Tribal Court until termination of Juvenile Court jurisdiction or when the juvenile(s) reaches the age of eighteen (18), whichever is later, except for adoption proceedings. If a juvenile file involves more than one (1) minor, the related tape shall be retained until the youngest minor involved reaches the age of eighteen (18) or termination of Juvenile Court jurisdiction, whichever is later.

(2) Tapes used in the recording of adoption proceedings shall be retained indefinitely. Upon the sealing of an adoption file, the related tape(s) shall be sealed with the contents of the adoption file and shall be available only upon an order issued by a duly qualified judge of the Tribes' Tribal Court as set forth in 4-8-11.

2-15-4 Reserved for Expansion

2-15-5 Jurisdiction

(a) The juvenile court has exclusive original jurisdiction over all proceedings established in this Code in which a child who is a member of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, or is the biological child of a member of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians, or is eligible for enrollment as a result of acts which are alleged to have occurred within the Territories of the Tribes:

- (1) is alleged or adjudicated to be a Juvenile Offender;
- (2) is alleged or adjudicated to be a dependent child;
- (3) is alleged or adjudicated to be a child in need of supervision;
- (4) termination of parental rights; or
- (5) adoption proceedings.

(b) Transfer from State Court

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

2-15-6 Evidence

Unless otherwise specifically provided by the provisions of Title 4, all contested matters in the Juvenile Court shall be conducted in accord with the Rules of Evidence of the Tribal Court of CTCLUSI as set forth in Chapter 2-9.

2-15-7 Juvenile Offender and Child in Need of Supervision Procedures

Proceedings in the Juvenile Court regarding a minor alleged to be a Juvenile Offender shall be conducted in accordance with Sections 4-2-8 through 4-2-16. Procedures regarding a minor alleged to be a "child in need of supervision" shall be conducted in accordance with Section 4-2-17 through 4-2-20.

(a) Petition

Proceedings under the Juvenile Code alleging that a child is a juvenile offender or a child in need of supervision shall be instituted by a petition filed by the juvenile

presenter on behalf of the Tribes and in the interest of the minor. The petition shall state:

- (1) The name, birthdate and residence of the minor;
- (2) The name and residence of the minor's parent, guardian or custodian;
- (3) A brief summary of the facts that bring the child within the jurisdiction of the court, including a citation to the Tribal Code provision or other law which the minor is alleged to have violated; and
- (4) If the minor is in detention or shelter care, the place of detention or shelter care and the time he/she was taken into custody.

(b) Setting of Hearing

Upon receipt of a petition alleging that a child is a juvenile offender or a child in need of supervision, the Juvenile Court shall set a date for the hearing which shall not be more than ten (10) days after the Juvenile Court receives the petition from the prosecuting attorney, if the minor is in custody or shelter care, or not more than thirty (30) days if the minor is not in custody or shelter care.

(c) Summons

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

- (1) The minor; and
- (2) The minor's parent, guardian or custodian

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

2-15-8 Dependent Child

Proceedings in the Juvenile Court regarding a minor alleged to be a Dependent child care shall be conducted in accordance with Chapter 4-4, Juvenile Dependency, of this code.

2-15-9 Termination of Parental Rights

(a) Purpose

Parental rights to a child may be terminated by the Juvenile Court according to the procedures in Chapter 4-9.

(b) Petition

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

- (1) The name, birthdate and residence of the minor;
- (2) The name and residence of the minor's parent, guardian or custodian;
- (3) If the child is in detention or shelter care, the place of detention or shelter care and the time he/she was taken into custody;
- (4) Reasons for requesting termination.

(c) Setting of Hearing

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

2-15-10 Confidentiality of Records

(a) All records held by the court or the legal custodian in cases under the jurisdiction of the Juvenile Court shall be maintained in a confidential manner. Inspection of the records shall be permitted by the following persons:

- (1) a party to the proceeding,
- (2) an auditor duly appointed by the Federal Government for compliance with conditions on the receipt of funds.

(b) Any other person may file a request with the court for inspection of the record. The request shall be made on a form provided by the court and shall include:

- (1) the name and professional affiliation of the person requesting access,
 - (2) the purpose of the request
 - (3) the proposed use of the records, including any proposed distribution or publication of the records or information contained therein.
- (c) The court shall provide notice of a request for inspection of records to all parties or their attorneys or spokespersons by telephone. If a party cannot be reached by telephone and does not have a designated attorney or spokesperson, the court shall send notice of the request by first class mail to the party at the last known mailing address. The court shall not issue an order regarding the request until two (2) days after completion of telephone notification or five (5) days after mailing of notice, whichever is later.
- (d) Any party objecting to the request may file a written objection with the court prior to the expiration of the time for ruling, as set forth above.
- (e) At the expiration of the time period set forth in subsection (c) above, the court may rule based on any written submissions, or may set a hearing on the matter.
- (f) In ruling on a request for inspection of the record, the court shall balance the right of privacy of the child, the parents and all other parties against the need of the requesting party to inspect the record.
- (g) Any order for inspection of the Juvenile Court record may:
- (1) limit the record to be viewed,
 - (2) redact names or other information from specific documents to be viewed;
 - (3) include a protective order delineating the right to copy, and the extent to which the records may be distributed or published.
- (h) A violation of this section or any other section of the Juvenile Code related to confidentiality of tribal Juvenile records is punishable by contempt.

2-15-11 Law Enforcement Records.

- (a) Law enforcement records and files concerning a child shall be kept separate from the records and files of adults.
- (b) All law enforcement records and files shall be confidential and shall not be open to inspection to any but the following:
 - (1) the child;
 - (2) any parent, guardian, or custodian of the child;
 - (3) the Tribal Judge and Juvenile Court staff;

- (4) any counsel who has appeared in the case;
- (5) any person involved in a peacegiving session involving the case; or
- (6) the Juvenile Court Coordinator.

2-15-12 Rule 14 Sealing of Juvenile Court Records and Law Enforcement Records.

When a child who has been the subject of any proceeding before the Juvenile Court attains his or her eighteenth (18) birthday, and all matters in the court have been terminated, or the child has died, the Juvenile Court Judge shall order the Clerk of the Court of the Juvenile Court to seal both the court records and the law enforcement records.

APPENDIX A
LEGISLATIVE HISTORY AND EDITORIAL CHANGES

JUVENILES – PURPOSE AND CONSTRUCTION

LEGISLATIVE HISTORY AND EDITORIAL CHANGES

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the Juveniles – Purpose and Construction Ordinance, Resolution No. 05-094, Ordinance No. 065, in a regular Tribal Council meeting on October 9, 2005. Vote was 7 (for), 0 (against) and 0 (abstaining).

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians approved the Juveniles – Purpose and Construction Ordinance, Resolution No. 05-037, Ordinance No. 065, in a regular Tribal Council meeting on May 15, 2005. Vote was 5 (for), 0 (against) and 0 (abstaining).