

Title 8 – Juveniles
Chapter 1 – General Provisions

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Legislative History

Enacted:

Juvenile Code, Ord. 170 (6/30/03), BIA (7/3/03).

Repealed or Superseded:

Juvenile Code, Ord. 68 (12/89), Enacting Res. 89-12-98 (repealing Ord. 40 and all other previous youth ordinances).

Youth Code, Ord. 40 (2/8/83), Enacting Res. 83-2-20, BIA (rescinded 5/5/83, approved 6/25/83) (repealing all previous youth ordinances).

Public Dances, Ord. 18 (12/4/46), BIA (2/18/46).

8-01.010 Title.

This Title shall be referred to as the “Juvenile Code.”

[History] Ord. 170 (6/30/03).

8-01.020 Purpose and Scope.

Chapter 1 through Chapter 12 of this Title shall be interpreted and understood to accomplish the following objectives:

- (A) To provide for the care, protection and wholesome moral, mental, and physical development of the young Indian people of the Swinomish Indian Tribal Community;

- (B) To insure that the young Indian people of the Swinomish Indian Tribal Community receive assistance and guidance in their own homes, whenever possible, separating the youth from his or her parent(s) only when necessary for his or her welfare;
- (C) To protect and to preserve the identity and pride of the young Indian people of the Swinomish Indian Tribal Community as Native Americans;
- (D) To provide a simple procedure for addressing and resolving conflicts involving Indian youth that is reflective of tribal traditions as well as the prevailing community standards, and which affords all affected persons a fair and impartial hearing, consistent with individual rights;
- (E) To discourage delinquent acts and to protect the tribal community's interest by providing supervision, care and rehabilitation; and
- (F) To insure that off-reservation courts will be willing and able to return young people of the Tribe and to the tribal community for care and guidance.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-01.030 Authority.

This Title is adopted pursuant to Article VI, Section 1(k), (l), and (o) of the Swinomish Constitution.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-01.040 Construction.

Chapter 1 through Chapter 12 of this Title shall be exempted from the rules of strict construction. They shall be read and understood in a manner that gives full effect to the purposes for which they were enacted.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-01.050 Definitions.

For purposes of Chapter 1 through Chapter 12 of this Title, unless otherwise expressly provided, the following definitions shall apply:

- (A) **“Abandon.”** Generally, when a parent leaves a youth without adequate communication or fails to support a youth and there is no indication of the parent’s willingness to assume his or her parental role for a period exceeding one (1) year. The period of one year is a guideline and not a strict rule. It may vary depending on the age and best interests of the youth and if supported by the testimony of a professional.
- (B) **“Adult.”** Any person subject to the jurisdiction of the Tribe who is either eighteen (18) years of age or older, married or otherwise emancipated.
- (C) **“Court.”** The Swinomish Tribal Youth Court when exercising jurisdiction under this Title.
- (D) **“Custodian.”** A person, other than a parent or guardian, who has been given temporary physical care, custody and control of a youth, including the duty to provide food, clothing, shelter, medical care, education and supervision to the youth.
- (E) **“Delinquent Act.”** An act committed by a youth, that if committed by an adult, would be designated a crime or for which a penalty is provided under tribal law.
- (F) **“Detention.”** The placement of a youth in a physically restrictive facility.
- (G) **“Domicile/Residence.”** The determination of domicile and residence shall be in accordance with tribal law and custom. In the absence of other factors clearly demonstrating an intent to establish a permanent home off the reservation, a youth’s domicile and/or residence shall be deemed within the reservation.
- (H) **“Emancipated Youth.”** This term shall be defined as a youth whose disabilities are removed for general purposes and has the power and capacity of an adult as outlined in Section 8-11.060.
- (I) **“Extended Family.”** This term shall be defined as a person who has reached the age of eighteen (18) and who is the Indian youth’s grandparent; aunt or uncle; brother or sister; brother-in-law or sister-in-law; niece or nephew; first, second or third cousin; step-parent; relatives whose relationship term to the youth is preceded by the prefix “great” or “grand;” the spouse by legal marriage of any of the previously named relations; or any person who is recognized as an extended family member by tribal custom.

- (J) **“Guardian.”** A person other than the youth’s parent who is responsible, by law, for that youth.
- (K) **“Guardian Ad Litem.”** An adult appointed by the Court to represent the best interests of a youth in any proceeding to which he or she may be a party.
- (L) **“Indian Tribe.”** Any Indian tribe, band, nation or other organizational group or community of Indians traditionally recognized as an Indian tribe by the Swinomish Indian Senate or recognized as eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village.
- (M) **“Indian Youth.”** A youth who is either enrolled in an Indian tribe or both (1) eligible for enrollment in an Indian tribe; and (2) a biological child of a person who is enrolled or is eligible for enrollment in an Indian tribe. The terms “enrolled” and “enrollment” include associate members of the Swinomish Indian Tribal Community and members of any Indian tribe recognized by the Swinomish Indian Senate.
- (N) **“Least Restrictive.”** This term directs the Court to select the least drastic method of achieving its goal; the restrictions placed on the youth must be reasonably related to the Court’s objective and must be the least restrictive way of achieving that objective.
- (O) **“Parent.”** Includes a biological or adoptive parent but neither includes persons whose parental rights have been terminated nor includes the unwed father whose paternity has not been acknowledged or established.
- (P) **“Probable Cause/Reason to Believe.”** Circumstances that are sufficient to convince a reasonable person that the facts alleged are true.
- (Q) **“Qualified Elder, Historian or Other Tribal Representative.”** An individual who because of his or her knowledge and experience has been certified by the Swinomish Indian Senate to testify as to the traditions and customs of the Swinomish Tribe before any federal, state or tribal court or administrative body.
- (R) **“Reservation.”** Means Indian country as defined in Title 18 U.S.C. § 1151, and any lands not covered under such Section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation. **“Reservation”** also means the Swinomish Indian Reservation.

- (S) **“Tribe.”** Means the Swinomish Indian Tribal Community that consists of the aboriginal Swinomish Indians, the Lower Skagit Indians, the Samish Indians and the Kickiallus Indians. When the term **“tribe”** is used, it shall mean **“Indian tribe”** as defined earlier in this Chapter.
- (T) **“Youth (minor).”**
- (1) A person under the age of eighteen (18) years;
 - (2) A person eighteen (18) years of age or older concerning whom proceedings are commenced in Youth Court prior to his or her eighteenth (18th) birthday; or
 - (3) A person eighteen (18) years of age or older who is under the continuing jurisdiction of the Youth Court.
- (U) **“Youth-in-Need-of-Care.”** A youth-in-need-of-care is a youth that either is neglected, physically abused, emotionally abused, sexually abused, nutritionally abused, dependent, or uncontrollable.
- (V) **“Youth Offender.”** A person who commits a delinquent act prior to his or her eighteenth (18th) birthday.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-01.060 Interpretation.

Whenever there is uncertainty or a question as to the interpretation of certain provisions of Chapter 1 through Chapter 12 of this Title, tribal law or custom shall be controlling and where appropriate, may be established by the written or oral testimony of a qualified elder, historian or other representative.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-01.070 Repealer.

Chapter 1 through Chapter 12 of this Title repeal and supersede Swinomish Indian Tribal Community Ordinance No. 40 and all other previous ordinances relating to Indian Youth. Ordinance 18 (12/4/46) and Ordinance 68 (12/89) are hereby repealed.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).

8-01.080 Severability.

[Reserved]

8-01.090 Effective Date.

This Title shall be effective upon approval by the Secretary of the Interior.

[History] Ord. 170 (6/30/03); Ord. 68 (12/89).